

## INTRODUCTION: The Most Serious Problems Encountered by Taxpayers

IRC § 7803(c)(2)(B)(ii)(III) requires the National Taxpayer Advocate to submit an annual report to Congress that contains a summary of ten “Most Serious Problems” encountered by taxpayers.<sup>1</sup> While we use the methodology described below to identify the Most Serious Problems, the list remains inherently subjective in many respects.

### A. METHODOLOGY OF THE MOST SERIOUS PROBLEMS

The National Taxpayer Advocate is in a unique position to identify the most pressing problems that the IRS faces and that negatively impact taxpayer service and rights. Because TAS is an independent part of the IRS, it can serve as the advocate for the taxpayer and use the experience of its staff to identify taxpayer problems to make recommendations to improve the IRS from within the organization. TAS also works with hundreds of thousands of taxpayers and practitioners every year through its casework and outreach events, so it sees problems from an external perspective. TAS employees interact regularly with taxpayers and IRS employees to resolve taxpayers’ individual problems and make systemic fixes to widespread problems.

The National Taxpayer Advocate identifies potential Most Serious Problems through multiple channels. Trends in TAS’s casework, referrals from congressional offices, research studies completed by TAS and outside groups, advocacy projects worked by TAS’s Office of Systemic Advocacy, and findings from IRS taskforces and teams on which TAS participates often reveal issues. Additionally, the National Taxpayer Advocate hears directly from individuals, including IRS employees, taxpayers, tax practitioners, other external stakeholders, and through TAS’s Systemic Advocacy Management System (SAMS) and other channels.<sup>2</sup>

The National Taxpayer Advocate considers several factors in identifying, evaluating, and selecting the Most Serious Problems encountered by taxpayers. The ten issues in this year’s report are selected largely according to the following criteria:

- Impact on taxpayer rights;
- Number of taxpayers impacted;
- Financial impact on taxpayers;
- Visibility, sensitivity, and interest to stakeholders, Congress, and external indicators (*e.g.*, media);
- Barriers to tax law compliance, including cost, time, and burden;
- Taxpayer Advocate Management Information System (TAMIS) inventory data; and
- Emerging issues.

### B. TAXPAYER ADVOCATE MANAGEMENT INFORMATION SYSTEM

The identification of the Most Serious Problems reflects not only the mandates of Congress and the IRC but also TAS’s integrated approach to advocacy – using individual cases to detect trends and identifying systemic problems in IRS policy and procedures. TAS tracks individual taxpayer cases on its internal system, TAMIS. The top 25 case issues, listed in Appendix 1, reflect TAMIS receipts based on taxpayer contacts in fiscal year (FY) 2021, a period spanning October 1, 2020, through September 30, 2021.

## C. THE MOST SERIOUS PROBLEMS ENCOUNTERED BY TAXPAYERS IN 2021

For the 2021 annual report, the ten Most Serious Problems are as follows:

### 1. **PROCESSING AND REFUND DELAYS: Excessive Processing and Refund Delays Harm Taxpayers**

During 2021, tens of millions of taxpayers were forced to wait extraordinarily long periods of time for the IRS to process their tax returns, issue their refunds, and address their correspondence. More than 75 percent of individual income tax return filings resulted in refunds that millions of taxpayers rely on to pay their basic living expenses. Therefore, processing delays caused financial hardships for some taxpayers and extreme frustration for many more. At the close of the 2021 filing season, the IRS had 35.3 million returns awaiting manual processing. As the IRS is preparing to begin the 2022 filing season, it is poised to carry over millions of unprocessed returns and millions of pieces of taxpayer correspondence, resulting in even longer delays for taxpayers who have been patiently waiting for far too long. To add complexity, when taxpayers file their 2021 tax returns, millions who received Advance Child Tax Credit (AdvCTC) payments will have to reconcile the monthly advanced payments they received with the amounts for which they are eligible. Similarly, eligible taxpayers who did not receive some or all of the third round of stimulus payments, as authorized by the American Rescue Plan Act, will have to claim them as credits on their returns. Thus, the unprecedented processing and refund delays taxpayers experienced in 2021 could be as bad, and potentially worse, in 2022 if taxpayers do not file electronically or do not properly reconcile their monthly AdvCTC payments or the third stimulus payment with their 2021 return.

### 2. **IRS RECRUITMENT, HIRING, AND TRAINING: The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration**

The IRS's budget was reduced by nearly 20 percent in inflation-adjusted dollars from 2010 to 2021. From 2010 to 2020, the IRS lost over 33,000 full-time employees. Over the past year, the IRS faced several additional staffing-related challenges. In FY 2021, the IRS saw a spike in call volume resulting in the lowest telephone Level of Service on record, which it must address through a combination of measures, including additional online capabilities and personnel. Staffing challenges also impacted all aspects of IRS operations and are negatively affecting taxpayers and tax administration. From pre-filing services to return processing and exam and collection activities, taxpayers are not receiving the Level of Service they need and deserve. The IRS can and must improve internal hiring and recruitment processes. However, even if the IRS perfects its internal processes, external limitations on the IRS still pose challenges difficult to overcome without additional support and flexibilities provided by Congress, the Department of the Treasury, the Office of Personnel Management, and the National Treasury Employees Union. Moreover, once the IRS hires employees, they will need significant training, which takes time and requires dedicated resources. The IRS will need sustained multiyear funding and more hiring flexibilities to build the workforce of the future.

### 3. **TELEPHONE AND IN-PERSON SERVICE: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications**

IRS phone service has gone from bad to worse during COVID-19, with calls reaching an all-time high and Level of Service falling to an all-time low. This inadequate phone service disadvantages taxpayers and harms tax compliance. The IRS, however, is attempting to implement meaningful technological improvements in accordance with the goals of the Taxpayer First Act and is hoping to hire additional customer service representatives. Sufficient funding from Congress and effective execution of IRS plans will go a long way toward improving the quality of customer service.

#### **4. TRANSPARENCY AND CLARITY: The IRS Lacks Proactive Transparency and Fails to Provide Timely, Accurate, and Clear Information**

The IRS is not consistently transparent and does not provide clear and timely information about what taxpayers need to know, leaving many confused and frustrated. For example, taxpayers could not access the status details of IRS operations, such as a filing season backlog, delayed refunds, returns pulled for inconsistencies, or amended return processing delays. Further, taxpayers are confused by unclear notices and IRS guidance, and they don't always understand the IRS's reasons for its decisions, as a rationale is not always provided. TAS recommends that the IRS take additional steps to be proactively transparent by providing timely, clear-cut, and understandable "need-to-know" taxpayer information, whether it addresses filing season issues or updates general guidance or other administrative matters.

#### **5. FILING SEASON DELAYS: Millions of Taxpayers Experienced Difficulties and Challenges in the 2021 Filing Season**

The 2021 filing season can be described as the perfect storm; it was one of the most challenging filing seasons experienced by tens of millions of taxpayers. The COVID-19 pandemic highlighted serious problems with the IRS's reliance on antiquated systems and processes, such as having to manually process millions of tax returns, which stymied tax administration and produced historically low Levels of Service. On May 17, 2021, the postponed filing season due date, over 35 million returns were still awaiting manual processing. Millions of taxpayers did not receive refunds timely or updates and adequate information regarding their delays, and it was extremely difficult to reach a customer service representative on the toll-free lines. The 2021 filing season caused tremendous confusion and frustration for taxpayers, infringed on taxpayer rights, and eroded taxpayer trust and confidence in our tax system.

#### **6. ONLINE ACCOUNTS: IRS Online Accounts Do Not Have Sufficient Functionality and Integration With Existing Tools to Meet the Needs of Taxpayers and Practitioners**

Every day, taxpayers use their computers or mobile devices to access financial accounts. Taxpayers and tax professionals have come to expect secure and convenient online access to their personal and client information, and they expect and deserve the IRS to provide similar access. The severe disruption in IRS operations resulting from the COVID-19 pandemic forced the IRS to deploy a number of online services and capabilities. Unfortunately, many of these services were designed as standalone portals with limited and specific functionality – the IRS has yet to develop and adopt a one-stop solution for online and digital services. A truly robust IRS online account system would transform tax administration.

#### **7. DIGITAL COMMUNICATIONS: Digital Communication Tools Are Too Limited, Making Communication With the IRS Unnecessarily Difficult**

The IRS has faced unprecedented challenges in the past year that have created an urgency to provide easy-to-use digital communication services while simultaneously facing budget and human resource limitations. To address these challenges and to improve productivity and efficiency, digital communication tools are vital for the IRS to ably service taxpayers. During the pandemic, the IRS made it easier for some taxpayers to do things such as securely sign and submit documents electronically, receive answers to questions through text chat, and access limited services through a mobile device. But the IRS and taxpayers would benefit from prioritizing and expanding those tools at a more rapid pace. Taxpayers who wish to use digital communication services should have expanded access to information and transactional interactions with the IRS. When digital communication tools are easy to find, understand, and use, they help ensure the taxpayers' *right to*

*quality service* through clear and easily understandable communications. However, the IRS must also maintain mail, telephone, and in-person service options for those who are not able or prefer not to communicate digitally.

## **8. E-FILING BARRIERS: Electronic Filing Barriers Increase Taxpayer Burden, Cause Processing Delays, and Waste IRS Resources**

During the 2021 filing season, about 91 percent of individual returns and about 69 percent of business returns were e-filed through October 23, 2021. While e-filing significantly benefits both taxpayers and the IRS, the IRS still receives a significant number of paper-filed returns. Paper returns require manual processing, which leads to processing delays and potential transcription errors. In contrast, e-filing significantly benefits taxpayers due to reduced transcription errors and quicker return processing and refund turnaround times. The IRS benefits because it takes fewer resources to process e-filed returns, which frees up much-needed resources to perform other filing season processing tasks, including processing paper returns filed by taxpayers who do not have the ability or desire to e-file. The inability to e-file tax forms, schedules, attachments, and other documents negatively impacts both taxpayers and the IRS. The IRS should remove barriers, think outside the box, and provide all taxpayers the option to e-file their returns to lessen the delays and burdens associated with paper returns and to free up resources for those taxpayers who file by paper.

## **9. CORRESPONDENCE AUDITS: Low-Income Taxpayers Encounter Communication Barriers That Hinder Audit Resolution, Leading to Increased Burden and Downstream Consequences for Taxpayers, the IRS, TAS, and the Tax Court**

In FY 2019, more than half of the taxpayers subject to correspondence audits had total positive incomes below \$50,000, and most of these low-income taxpayers claimed the Earned Income Tax Credit (EITC). These taxpayers often face particular challenges navigating the correspondence audit process. The IRS correspondence audit process is structured to expend the least amount of resources to conduct the largest number of examinations – resulting in the lowest level of customer service to taxpayers having the greatest need for assistance. Correspondence audits produce the lowest agreement rate, the highest no-response rate, and the highest volume of cases assessed by default. The resulting high volume of unagreed cases leads to use of downstream resources for resolution activities that include audit reconsideration, appeals, litigation, and involvement of other IRS functions such as TAS and Collection. By devoting additional resources at the beginning of the correspondence audit process, the IRS could provide an appropriate level of customer service during the audit, avoiding unnecessary downstream costs and reducing the burden on our nation's least affluent and most vulnerable taxpayers.

## **10. COLLECTION: IRS Collection Policies and Procedures Negatively Impact Low-Income Taxpayers**

Many taxpayers have difficulty paying their tax liabilities. Low-income taxpayers in particular struggle to balance paying their tax debts with paying their basic living expenses. The IRS offers collection alternatives for financially struggling taxpayers, but the alternatives are underutilized. Some taxpayers seeking installment agreements do not receive the relief from user fees Congress intended because IRS procedures for identifying low-income taxpayers are flawed. Requests for offers in compromise have declined in seven of the past eight years. Currently not collectible-hardship status and offset bypass refund relief are unnecessarily difficult to obtain. The IRS continues to issue automated collection notices despite backlogs in processing taxpayer correspondence and amended returns, and some taxpayers are surprised to learn they cannot dispute the merits of their underlying liabilities at a collection due process hearing because IRS collection notices do not adequately explain their rights.

### Endnotes

- 1 In previous years, Congress tasked the National Taxpayer Advocate with identifying at least the 20 most serious problems impacting taxpayers. This change was the result of the passage of the Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019).
- 2 SAMS is a database of systemic issues and information reported online to TAS by IRS employees and members of the public. IRS, Systemic Advocacy Management System (SAMS), <https://www.irs.gov/advocate/systemic-advocacy-management-system-sams>. TAS reviews and analyzes the submissions and determines a course of action, which can include information-gathering projects, immediate interventions, and advocacy projects. Internal Revenue Manual 1.4.13.4.9.2, Systemic Advocacy Management System (SAMS) (July 16, 2021).

## PROCESSING AND REFUND DELAYS: Excessive Processing and Refund Delays Harm Taxpayers

### WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

During 2021, tens of millions of taxpayers were forced to wait extraordinarily long periods of time for the IRS to process their tax returns, issue their refunds, and address their correspondence. More than 75 percent of individual income tax return filings resulted in refunds, which for many taxpayers included Earned Income Tax Credit (EITC) and Child Tax Credit benefits. Millions of taxpayers rely on these benefits to pay their basic living expenses. Therefore, processing delays caused financial hardships for some taxpayers and extreme frustration for many more. At the close of the 2021 filing season, the IRS had 35.3 million returns awaiting manual processing.<sup>1</sup>

As the IRS is preparing to begin the 2022 filing season, it is poised to carry over millions of unprocessed returns and millions of pieces of taxpayer correspondence, resulting in even longer delays for taxpayers who have been patiently waiting for far too long. To add complexity, when taxpayers file their 2021 tax returns, millions who received Advance Child Tax Credit (AdvCTC) payments will have to reconcile the monthly advanced payments they received with the amounts for which they are eligible. Similarly, eligible taxpayers who did not receive some or all of the third round of stimulus payments, as authorized by the American Rescue Plan Act (ARPA), will have to claim them as credits on their returns. Thus, the unprecedented processing and refund delays taxpayers experienced in 2021 could be as bad, and potentially worse, in 2022, particularly if more taxpayers do not file electronically or properly reconcile their monthly AdvCTC payments or the third stimulus payment with their 2021 return.

### EXPLANATION OF THE PROBLEM

The IRS relies on taxpayers to do their part by filing accurate and timely tax returns. In exchange, the IRS pays out refunds – generally quickly – and can focus its resources on compliance efforts for those who do not comply. The pandemic, lack of funding, and depleted staffing has caused a high volume of backlogged inventory, and taxpayers are frustrated with the lengthy delays in the processing of their returns and correspondence with little or no communication from the IRS. As of mid-December, the IRS had:

- 6.2 million unprocessed individual returns (Form 1040);
- 2.8 million unprocessed business returns (Form 941);
- 2.4 million unprocessed amended individual returns (Form 1040-X);
- 427,000 unprocessed amended business returns (Form 941-X); and
- Approximately 4.75 million pieces of general taxpayer correspondence.<sup>2</sup>

While much of the processing delay is related to tax year 2020 paper returns, some taxpayers are still waiting for resolution of their electronically filed 2020 tax returns, amended returns, and correspondence replying to IRS notices.

The IRS is in crisis and needs to apply resources to its core mission – processing these returns and paying the corresponding refunds. Some of these refunds contain COVID-19-related relief that Congress provided taxpayers over a year ago but for which they are still waiting. For other taxpayers, their refund may provide critical funds for basic living expenses or for employee payroll. And for many taxpayers, their unprocessed



tax returns are impacting their ability to obtain a mortgage, refinance their house, or obtain student loans. Without reasonable levels of service on the phones, and with inadequate online accounts, taxpayers are left in the dark.

This issue, like the others discussed throughout this report, is not only due to the pandemic. It is also a direct result of a diminishing budget over the past ten years that has led to a lack of adequate staffing among IRS processing staff.<sup>3</sup> The ongoing processing delays combined with the IRS's loss of its processing staff and inability to hire employees all negatively impact the 2022 filing season. The IRS will be carrying over millions of unprocessed tax returns and taxpayer correspondence into 2022. With its current staffing, the IRS will find itself in the difficult position of trying to timely process 2022 filing season returns while simultaneously trying to resolve its existing backlog. As the IRS entered the 2021 filing season, the IRS estimated that it had more than 11.7 million paper-filed individual and business returns that it still needed to manually process.<sup>4</sup> That additional strain on its resources resulted in delays that continued through the end of the year.

The 2022 filing season is poised to be another difficult one as the IRS also grapples with the reality of operating under a continuing resolution that negatively impacts its ability to hire. In addition, it is anticipated that the COVID-19 vaccine mandate may cause additional staffing shortages at campus locations across the IRS. Similar to the last filing season, taxpayers will be reconciling the Rebate Recovery Credits (RRC) on their tax returns, and for the first time, they will be reconciling advance payments of the Child Tax Credit (CTC) as well. Last year, the IRS manually processed over 11 million returns due to inconsistencies between IRS records of the first and second stimulus payments and the RRC claimed on these returns.<sup>5</sup> With tens of millions of individuals claiming AdvCTC and RRC for the third stimulus payment, we believe the IRS will again be faced with the daunting task of manually reviewing tens of millions of returns, thus causing more processing and refund delays for millions of taxpayers. Without more staffing, these returns and refunds will be delayed even further.

While the IRS can ask taxpayers and practitioners to be patient as the IRS makes its way through its backlog, many have reached the limit of that patience. Taxpayers are doing their part to comply, but the IRS is not fulfilling its end of the bargain. The IRS needs to take immediate steps to fulfill its core mission – timely process tax returns during the filing season and issue refunds to taxpayers in a timely fashion. Moreover, the IRS needs to provide taxpayers with specific information about when to expect the IRS to process their returns, issue their refunds, or answer their correspondence. This past filing season left millions of taxpayers without answers or the monies to which they are rightfully entitled.

## ANALYSIS

### How Did We Get Here?

The IRS backlog results from several issues: the COVID-19 pandemic, a continued reduction in budgets and staffing levels within the IRS, and the impact of multiple legislative changes over the last two years. The processing of tax returns and issuance of refunds are the IRS's main priorities during the filing season, but the fiscal year (FY) 2021 filing season was an extremely difficult one for taxpayers, practitioners, and the IRS.<sup>6</sup>

Entering the 2021 filing season, the IRS still had not processed a backlog of paper tax returns and taxpayer correspondence received during the 2020 filing season.<sup>7</sup> At the end of calendar year (CY) 2020, the IRS estimated that it had more than 11.7 million paper-filed individual and business returns that it still needed to manually process.<sup>8</sup> The IRS continued to operate with less than full staffing, due to social distancing requirements related to the ongoing pandemic and ongoing insufficient budgets that have not allowed the IRS to fully staff its taxpayer service operations for several years.<sup>9</sup> September 2021 marked the official closure of the Fresno paper return processing center. Originally announced in 2016 as part of the IRS's consolidation of its processing centers, the closing of the Fresno location was driven by the continued growth in electronic

filing and IRS efforts to consolidate resources.<sup>10</sup> While the Fresno closure was only recently finalized, the IRS has been working since 2016 to find new positions for its Fresno processing employees, once again leaving the IRS without enough trained employees to deal with the ongoing paper return backlog.

**FIGURE 2.1.1, Tax Returns Received by Type and Year<sup>11</sup>**

Returns Received – Type/Year	CY 2018	CY 2019	CY 2020	CY 2021
Paper Forms 1040	16,513,569	16,948,000	14,852,000	16,202,000
Electronic Forms 1040	133,842,282	138,047,000	152,232,000	151,765,000
Paper Forms 1040-X	3,262,509	2,882,013	2,486,555	2,129,027
Electronic Forms 1040-X	0	0	144,214	1,752,219
Paper Forms 941	10,301,497	12,770,328	11,594,459	10,775,793
Electronic Forms 941	14,138,707	12,093,323	12,939,196	14,199,749
Paper Forms 941-X	330,079	325,718	338,678	738,422
Electronic Forms 941-X	0	0	0	0
Forms 1045	33,540	6,720	28,695	18,825
Forms 1139	22,139	4,360	22,882	16,337

### Pandemic Legislation Drove Additional Paper Return Filings

Over the past two filing seasons, Congress has passed four major pieces of legislation designed to help mitigate the economic impact of COVID-19 for taxpayers and businesses.<sup>12</sup> While new tax legislation often challenges the IRS's ability to implement changes quickly, recent pandemic legislation has had a twofold effect: first, the IRS was responsible for quickly implementing several new provisions, and second, some of these provisions resulted in taxpayers having to file paper returns to receive the relief Congress was providing. Millions of taxpayers either did not receive their stimulus payments or did not receive the correct amount. For these taxpayers, the legislation required them to reconcile on their 2021 tax returns the difference between the amount they received and the amount they should have received. To further complicate matters, the criteria for the three different rounds of stimulus payments included different qualifications or definitions of a dependent, and millions of taxpayers calculated their dependent payments on the incorrect assumption that the last legislation was the standard for the prior two qualifying definitions of a dependent.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act made several modifications to net operating losses (NOLs) and authorized a carryback of any NOL arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, to each of the five taxable years preceding the taxable year in which the loss arose. It also modified the credit for prior-year minimum tax liability of corporations and permitted an election for taxpayers to exclude or waive an IRC § 965(a) tax year from loss carrybacks.<sup>13</sup> To take advantage of these changes, corporations could claim a refund on Form 1139, Corporation Application for Tentative Refund, or by filing an amended return.<sup>14</sup> Individuals could claim a refund from a carryback by filing Form 1045, Application for Tentative Refund, or Form 1040-X, Amended U.S. Individual Income Tax Return.<sup>15</sup> Unfortunately, the tentative refund forms require a paper return that taxpayers cannot file electronically. The IRS is still struggling to process paper returns, and some tentative refund requests have been waiting up to a year or longer.<sup>16</sup>

The goal of the CARES Act was to immediately get money into the hands of businesses suffering during the pandemic. Statutorily, the IRS should process these forms within 90 days.<sup>17</sup> However, this is not happening. Although the IRS had sufficient time to staff a tentative allowance unit, it chose not to do so. As a result, the IRS has not been able to handle the processing and payment of the tentative allowance refunds. Due to delays



in processing, the IRS had to pay nearly \$435 million in interest on these tentative refund claims that were received in 2020, and more interest is still accruing on pending claims.<sup>18</sup>

The IRS itself acknowledges on its operating status page that it continues “to experience inventory backlogs and processing times longer than the normal 90-day statutory period,” and it “cannot provide a timeframe” for how long businesses may have to wait. The IRS’s advice to taxpayers is simply to “consider the significant additional approval time and plan for it.”<sup>19</sup> This is money that businesses may need to pay employees and keep their doors open, yet the IRS is putting the burden on the businesses to plan for the IRS’s own delays. This advice might be more palatable if the IRS could provide a realistic timeframe for processing or even inform taxpayers how many tentative refund claims are in the backlog; unfortunately, the IRS does not have this information available. It is not possible for businesses to plan for additional approval times, as the IRS advises, when they are not given any information about how long those times are. To comply with the statute and provide the financial relief Congress intended, the IRS should immediately establish a unit to solely focus on processing these tentative refund claims. TAS is assisting businesses and practitioners that have been waiting for almost nine months for a response from the IRS on these tentative refunds, and there is no end in sight.

Similar challenges arise in the processing of Form 941-X, Adjusted Employer’s Quarterly Federal Tax Return or Claim for Refund, which employers used to claim certain COVID-19-related employment tax credit benefits.<sup>20</sup> As of November 17, 2021, the IRS reported having approximately 402,000 Forms 941-X that it cannot process until the related Form 941 is processed first. The IRS has 2.4 million unprocessed Forms 941.<sup>21</sup> In assisting taxpayers, TAS has been told that IRS employees are still awaiting guidance on how to process these claims. In one case, the IRS’s response to countless TAS Operations Assistance Requests (OARs) dating back to June was simply that it is still awaiting processing guidance for these claims.<sup>22</sup> It has been close to a year since legislative changes sought to provide relief to employers – relief that necessitated filing Form 941-X to claim it. Lack of guidance is not a sufficient excuse for why the IRS has not processed these returns. The IRS is one agency, and if one part of the agency requires assistance from another part to comply with a legal requirement, IRS management must ensure that there is sufficient coordination to make it happen.

While the IRS cannot control the legislative changes it must implement, it can still take steps to mitigate some of its problems and delays. It should prioritize the processing of paper returns and issuing refunds immediately, realigning resources if necessary. The IRS beginning to focus more on compliance activities when it hasn’t finished processing tax returns is unfair to the millions of individual and business taxpayers who are still waiting for their refunds. The IRS should reallocate its resources and assign all hands on deck to process returns (original and amended), issue pending refunds, and reply to the millions of IRS notice responses and inquiries by taxpayers. If the IRS can train new employees to work in the submission processing function, it can certainly train its existing workforce to truly be “all hands on deck” until it catches up with its processing backlog and gets through the upcoming filing season. Until it processes the backlog of returns and correspondence, the IRS should temporarily suspend automated collection activity. Generating notices while issues are still pending only creates additional phone calls and correspondence that cause headaches for many taxpayers and representatives.

### **Taxpayers Are Paying the Price for IRS Delays**

Given the combination of reduced staffing, the pandemic, and multiple legislative changes that required significant resources to implement, the current backlog of paper returns is not surprising. Yet even if understandable, the taxpayer impact is severe. Taxpayers who have filed their tax returns continue to wait, and wait, and wait for any update from the IRS. Over the past few months, as TAS has urged, the IRS has begun to provide updates on processing and other delays on its IRS Operations website.<sup>23</sup> This information is a start, if only because it provides some transparency to the process and gives taxpayers more realistic expectations of when the IRS may process their returns.<sup>24</sup> While the IRS has the Where’s My Refund? and Where’s My Amended Return? tools, as well as the IRS2Go mobile app, neither the tools nor the app provides

taxpayers specific information as to what is causing their particular delay or when they may receive their refund.<sup>25</sup> TAS has recommended that the IRS improve its online resources to provide taxpayers with specific information about the cause of a refund delay, what information the taxpayer needs to furnish, if any, and a reasonable estimate as to when the IRS expects to issue the refund.<sup>26</sup>

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While keeping taxpayers better informed about the status of their account issues would be a big step forward, it will not, by itself, get refunds to taxpayers more quickly. According to the IRS, average tax refunds were up over 11 percent in 2021 due to many of the COVID-19 relief provisions. The 2021 average refund was \$2,775, up from \$2,495 in 2020, and the average direct deposit refund was even higher at \$2,851, compared to \$2,592 the prior year.<sup>27</sup> This means that the economic impact for taxpayers still waiting for their refunds is even greater. In November, one taxpayer reported filing his taxes in March, and he was waiting for an \$8,000 refund. He tried contacting the IRS numerous times only to be told the IRS would process his return in 19 days – but he was still waiting for his refund as of November.<sup>28</sup> Many taxpayers desperately need the money and cannot afford to wait. One taxpayer, who is fighting cancer, noted that with her health deteriorating; she desperately needs her tax refund to pay her mortgage. As of November, she was also still waiting.<sup>29</sup>

Most taxpayers cannot get through to a telephone assistor on the toll-free lines to check on the status of their returns.<sup>30</sup> For those who are lucky enough to get through, the IRS's response often leaves much to be desired. One Certified Public Accountant posted on Twitter a copy of the letter she received from the IRS stating:

Thank you for the inquiry of Oct. 15, 2021 to resolve your account with us. We received your Amended Return on March 22, 2021 and we apologize we are still experiencing processing delays. We do not have a specified timeframe to advise on when the return will be processed...<sup>31</sup>

### Ongoing Delays Have Broken the Safety Net for Taxpayers

One of TAS's many roles is to be the safety net for taxpayers – to catch taxpayers when IRS processes break down and taxpayers fall through the cracks. TAS case acceptance criteria focus on cases in which taxpayers are experiencing an economic hardship or current processes are broken, and absent TAS assistance, they may not receive relief.<sup>32</sup> The ongoing backlog in return processing has noticeably shifted TAS case receipts. Despite changes in TAS case acceptance criteria, TAS received 264,343 cases in FY 2021, which is 57,571 more cases than received in FY 2020, an increase of nearly 28 percent.<sup>33</sup> Figure 2.1.2 compares the top ten sources of TAS receipts by issue for FYs 2020-2021.<sup>34</sup>

**FIGURE 2.1.2, Top Ten Issues for FY 2021 Cases Received in TAS Compared to FY 2020<sup>35</sup>**

Rank	Issue Description	FY 2020	FY 2021	FY 2021 Percent of Total	Percent Change FY 2020 to FY 2021
1	Tax Return Filings: Unpostables and Rejects	15,784	45,665	17.3%	189.3%
2	Tax Return Filings: Pre-Refund Wage Verification Hold	68,499	36,937	14.0%	-46.1%
3	Processing Amended Returns	7,676	20,961	7.9%	173.1%
4	Processing Original Returns	8,509	14,766	5.6%	73.5%
5	Earned Income Tax Credit (EITC)	12,176	14,588	5.5%	19.8%
6	Health Insurance Premium Tax Credit for Individuals	8,287	14,550	5.5%	75.6%
7	Other Refund Inquiries and Issues	8,187	11,642	4.4%	42.2%
8	Taxpayer Protection Program (TPP) Issues	7,098	11,412	4.3%	60.8%
9	Identity Theft	5,900	9,234	3.5%	56.5%
10	Math Error	1,505	4,983	1.9%	231.1%
<b>Other TAS Receipts</b>		<b>63,151</b>	<b>79,605</b>	<b>30.1%</b>	<b>26.1%</b>
<b>Total TAS Receipts</b>		<b>206,772</b>	<b>264,343</b>		<b>27.8%</b>

Not surprisingly, much of the increase in TAS cases can be attributed to IRS processing issues – which include unpostable and reject cases.<sup>36</sup> Unfortunately, these are not cases where TAS is performing its core advocacy work. Rather, they are cases where TAS is simply following up with the IRS to get returns processed and refunds issued. For most taxpayers, getting their returns processed so they can receive their refunds is their top priority; however, there is little TAS can do to expedite the processing of a tax return. TAS employees generally can only resolve a taxpayer’s account problem if there is relevant information on IRS systems. If a paper return is sitting in a processing center, TAS has no way to locate the return, and the IRS operating divisions generally cannot locate the return until the IRS processes the return. When TAS accepts a case involving an unprocessed tax return, it can do little more than monitor the taxpayer’s account until the IRS processes the delayed return. This takes valuable time and resources away from other taxpayers with more complex issues where TAS can provide advocacy and move a case toward resolution.

Our congressional cases show the same issues. In FY 2021, TAS congressional receipts totaled 66,453 cases, an 88.5 percent increase from FY 2020 – and a staggering 526 percent increase over the 10,620 congressionally referred cases received in FY 2019, the last pre-pandemic year.<sup>37</sup> Figure 2.1.3 highlights the top five issues in congressional cases for FY 2021. Congressional case receipts involving “Unpostables” and “Rejects” increased by almost 300 percent, and Processing Amended Returns case receipts increased by almost 400 percent.

**FIGURE 2.1.3, Top Five Congressional Receipts by Primary Core Issue Codes for FY 2021 Compared to FY 2020<sup>38</sup>**

Rank	Issue Description	FY 2020	FY 2021	Percent Change
1	Tax Return Filings: Unpostables and Rejects	4,710	18,648	295.9%
2	Processing Original Returns	4,368	9,233	111.4%
3	Processing Amended Returns	919	4,502	389.9%
4	Taxpayer Protection Program Issues	1,704	4,104	140.8%
5	Other Refund Inquiry or Issue	1,823	3,988	118.8%

TAS has essentially become a secondary return processing function. Through OARs and Taxpayer Assistance Orders (TAOs), TAS requests the IRS prioritize the processing of our cases.<sup>39</sup> TAS issued hundreds of TAOs to the IRS's Submission Processing and Accounts Management functions to expedite the processing of both 2019 and 2020 returns.<sup>40</sup> This is problematic and should not be a significant portion of TAS's work.

TAS casework is not the only place that is suffering. With the low levels of service on the IRS toll-free lines, TAS's intake operations have also struggled with a much higher number of calls. Many taxpayers have been unable to get answers about their tax return, refund, or other issues from the IRS, so they turn to TAS for assistance. Calls to the TAS toll-free lines increased from 81,210 in FY 2017 to 212,733 in FY 2021, an increase of 162 percent. TAS simply could not keep up with the number of taxpayer inquiries, and TAS's intake operations Level of Service dropped to an unacceptable level of 30 percent.<sup>41</sup> Taxpayers quickly overwhelmed voicemail systems in local TAS offices, and TAS was forced to implement a phone gating system designed to manage the number of phone messages left by taxpayers. TAS's inability to assist all taxpayers is unacceptable, and it is not our mission to pick up the work when the IRS is unable to keep up with it.

This work has strained TAS resources to the point where TAS had to make difficult decisions about which cases to accept. TAS does not accept cases in which we cannot meaningfully expedite or improve assistance to taxpayers. In November, case receipts for amended return issues continued to climb, and the IRS was unable to provide the status on the processing of many of these returns.<sup>42</sup> The IRS had a backlog of more than 2.7 million unprocessed amended returns, and the IRS estimated processing times to take well over 20 weeks.<sup>43</sup> Because of the IRS's processing delays, TAS could not meaningfully advocate for taxpayers in these amended return cases and found itself unable to expedite processing for taxpayers. In all of FY 2021, TAS issued bulk TAOs to assist 477 taxpayers with processing amended returns. In the first month and a half of FY 2022, we issued bulk TAOs instructing the IRS to process the amended returns for 3,660 taxpayers. On November 9, 2021, the National Taxpayer Advocate issued a Taxpayer Advocate Directive (TAD) directing the IRS to complete processing of all backlogged amended tax returns by December 29, 2021, or provide a detailed plan for completing processing of the backlog.<sup>44</sup>

This is not a position TAS should be in or wants to be in. Our goal is to provide assistance to every taxpayer who meets our criteria. However, TAS does not have the resources to take on the IRS's work simply because the IRS is overwhelmed, and it is not the mission Congress has given us. Doing so jeopardizes our role in tax administration and prevents us from devoting our resources to help taxpayers in areas where TAS assistance can make a difference. In short, TAS is designed to be the safety net for taxpayers – not the safety net for the IRS.

### **The IRS Is Not Proactively Solving the Backlog of Amended Returns**

In its response to the TAD, the IRS stated that it “does not have the resources to complete processing of all backlogged/unprocessed amended returns by December 29, 2021,” and it is “pursuing several approaches to reduce the amended return inventory.”<sup>45</sup> The IRS's response is disappointing and does not solve the

unprocessed return problem in the near future. While we recognize the resource limitations the IRS is facing, the TAD response failed to provide a detailed plan to address the processing backlog. Drastic times call for drastic measures. The IRS must take extraordinary measures to get the processing backlog resolved and pay the outstanding refunds. It needs to move into the next filing season with minimal backlog and reduce future processing challenges impacting all taxpayers.

**TAS does not have the resources to take on the IRS's work simply because the IRS is overwhelmed, and it is not the mission Congress has given us. ... In short, TAS is designed to be the safety net for taxpayers – not the safety net for the IRS.**

The IRS's efforts to hire are commendable, but as noted elsewhere, hiring is a long-term solution that will not have an immediate impact.<sup>46</sup> And while better control of inventory and the use of overtime will help, they are not enough. In its response, the IRS commits to doing very little to address the processing backlog to ensure taxpayers expeditiously get the refunds to which they are entitled. Instead, it avoids making any firm commitments to address the problem and instead talks about "explor[ing] flexibilities in use of CSR resources" and "continu[ing] to look at innovations we can implement, such as new technology, including tools to automate repetitive transactions and new digital capabilities..."<sup>47</sup> We fully support this exploration and attempts at innovation, but the IRS needs to address this problem now – not a year or more from now. Regarding the processing problems, the IRS is not providing meaningful updates for IRS.gov, instead saying that the Wage and Investment Division "is working with TAS to develop a plan to provide weekly data and to post meaningful updates on IRS.gov."<sup>48</sup> Taxpayers are seeking updates now – not in the future. Taxpayers are looking for refunds now – not in the future.

The TAD response does not adequately address the problem in front of it – that the IRS is harming millions of taxpayers. Although the IRS is to be commended for processing the vast majority of original filed returns, quickly administering three rounds of stimulus payments, and within months commencing payments of AdvCTC, it still has not completed its core filing season responsibilities or the processing of amended returns. Based on its response to our TAD, the IRS does not appear to have any strategic plan in place to immediately address an issue that continues to plague millions – and likely will for the foreseeable future. Taxpayers deserve better than this from the IRS.

## CONCLUSION AND RECOMMENDATIONS

The IRS must take extraordinary steps to resolve the backlog of filings and issue long overdue refunds. This filing season should not be repeated or become the norm. Taxpayers who file returns timely should not wait months on end for a refund, with no sign of hope in sight and no communication from the IRS. The IRS should not be forced to choose between answering the phone lines and processing returns or between responding to taxpayer correspondence and providing walk-in service. Unfortunately, as we sit today, the IRS is not performing any of these services well. Until it resolves the correspondence backlog and digs itself out of the hole in which it finds itself, the IRS should stop all automated collection notices until it addresses taxpayer responses to IRS notices.

As the IRS prepares for the 2022 filing season with millions of unprocessed returns and continues to operate without a full-year budget, and as it recognizes millions of taxpayers will need to reconcile their AdvCTC monthly payments and third stimulus payments on their 2021 tax returns, the outlook for the upcoming

filing season is bleak.<sup>49</sup> The IRS relies on taxpayers to timely file accurate tax returns, and in turn, taxpayers rightfully expect the IRS to take timely action on their tax filings. If we want to maximize compliance by individuals and businesses with the tax laws, we need a tax administration agency that is responsive and helpful. That means it must be able to answer taxpayer questions, process returns and issue refunds quickly, and respond to taxpayer correspondence within reasonable timeframes. Over the past year and a half, the IRS has failed to meet taxpayer needs and expectations. Much of its struggles are attributable to insufficient staffing. To improve taxpayer service, Congress must provide the IRS with sufficient resources. For its part, the IRS must take steps to ensure that it is prioritizing taxpayer service – which includes processing tax returns – before it turns its attention to compliance work. The IRS has been continuously asked to do more with less, and it has reached a point where providing basic services is no longer possible. Congress and the IRS will continue to harm the very taxpayers they are trying to serve until they address these issues.

### **Preliminary Administrative Recommendations to the IRS**

The National Taxpayer Advocate recommends that the IRS:

1. Provide weekly filing season reports on IRS.gov about the status of return processing timeframes so taxpayers know what to expect when they file their returns.
2. Improve online resources to provide taxpayers with specific information about the cause of the taxpayer's refund delay, what information the taxpayer needs to provide, and a reasonable estimate regarding when the IRS expects to issue the refund.
3. Implement electronic amended return processing to eliminate the delays caused by traditional paper processing.
4. Immediately develop and issue guidance for the processing of Forms 941-X claiming COVID-19 employment tax relief.
5. Create a dedicated team to process Forms 1139 and 1045 within 90 days of filing.
6. Authorize the use of secure email within the campuses for return processing issues, taxpayer questions, or follow up with taxpayers.
7. Expand current online account offerings to allow taxpayers to upload documents necessary to resolve any issues associated with their tax returns.
8. Suspend all automated collection notices until the IRS is current on processing original and amended returns and unprocessed correspondence.

### **Legislative Recommendations to Congress**

The National Taxpayer Advocate recommends that Congress:

1. Sufficiently fund the IRS to allow full staffing of Submission Processing and Accounts Management functions so the IRS is not forced to continually shift resources among competing priorities.
2. Fully fund the IRS's information technology modernization needs to allow for expedited processing of original and amended tax returns.
3. For FY 2022, provide TAS with additional funding in line with the overall percentage increase in IRS funding.
4. If legislation passes and increases the IRS's enforcement budget by roughly half over currently appropriated levels, provide a minimum 50 percent increase in TAS's annual budget over the ten-year period to ensure TAS has adequate staffing to help address the downstream consequences of increased enforcement and to identify new systemic problems resulting from the increased enforcement so that TAS can advocate for solutions.

### **RESPONSIBLE OFFICIAL**

Kenneth Corbin, Commissioner, Wage and Investment Division, and Chief Taxpayer Experience Officer



## IRS COMMENTS

The IRS faced unprecedented volumes of inventory and phone calls coupled with extraordinary challenges in managing work in a pandemic. In addition to these ongoing challenges, there have been legislative changes that would have increased amended returns and created further backlogs, if proactive steps had not been taken to adjust accounts and issue refunds directly to taxpayers.

We quickly put in place systems to process and distribute over \$800 billion in Economic Impact Payments (EIPs) since the spring of 2020. The February 12, 2021 opening of the filing season was slightly later than in previous years. The delayed start gave the IRS time for additional programming to accommodate tax law changes and a second round of EIPs. This ensured that eligible individuals and families would receive tax refunds and remaining stimulus tax credits as quickly as possible. The later start of the filing season did not impact refunds on returns claiming the Earned Income Tax Credit (EITC) or the Additional Child Tax Credit (ACTC). By law, the IRS cannot issue these refunds before February 15. Taxpayers were encouraged to e-file their returns for the most expeditious processing and to check the Where's My Refund? tool on IRS.gov or the IRS2Go app to find out their estimated refund date. To ease taxpayer burden, the deadline for individuals to file and pay their federal income was extended to May 17, 2021.

Even while processing the tax year 2020 returns, we took proactive steps to reduce taxpayer burden with regard to tax law changes made after the start of the filing season. We systemically analyzed over 14 million 2020 returns to identify and determine eligibility for the unemployment compensation exclusion for people who already filed returns. We used a phased recovery approach based on return complexity to automatically adjust taxpayer accounts and allow the exclusion if it was not claimed on the tax return resulting in millions of refunds without further action by the taxpayers.

The IRS is continually assessing additional ways to reduce paper processing and provide more efficient service for our customers. The IRS took tremendous steps to reduce inventories of unopened mail, returns, and correspondence during the last year. Our employees worked day, night, and weekend shifts, along with overtime, to open mail and process tax returns and taxpayer correspondence in the order we received them. The IRS is now opening mail within normal timeframes. We rerouted tax returns and taxpayer correspondence from locations that are behind to locations where more staff is available. We shifted staffing resources from telephones to inventory when phone demand permitted. We expanded our digital services by allowing taxpayers to electronically file Form 1040-X, Amended U.S. Individual Income Tax Return, using commercial tax-filing software.

Our toll-free telephone lines are an important service delivery channel during the filing season and throughout the year. Demand for telephone services was significantly higher due to the processing delays, changes in legislation, and multiple rounds of EIPs. Through the end of the fiscal year, we answered almost 68 million calls through assistor services and automation, almost 4 million more assistor calls than in the prior year.

The IRS applied an aggressive approach to mitigate the staffing challenges caused by the pandemic. We had record numbers of employees teleworking to provide continuous service for answering phones and processing correspondence, including amended returns. The IRS started the hiring process for the 2021 filing season earlier than normal and continued hiring throughout the summer and will continue our hiring efforts throughout the year, to the extent funding permits and eligible prospects accept job offers, to staff up our processing centers to work through our inventory.

This year, we also used contracted telephone assistants to answer general ACTC inquiries, deployed an automated Voice Bot on the EIP telephone line to answer questions, and employed overtime to cover demand. We are strategically reassigning our work and proactively utilizing technology driven solutions.

We understand that processing delays can pose a hardship to taxpayers. As we continue to address our backlog and provide additional options for taxpayers, we are also working to deliver a better experience during the upcoming 2022 filing season.

## TAXPAYER ADVOCATE SERVICE COMMENTS

The IRS's response continues to ignore the impact and hardship its actions – or in this case lack of action – are having on taxpayers. While the IRS has faced incredible challenges over the past two years, that does not excuse the IRS's failure to address the ongoing processing delays. Taxpayers continue to suffer as they endure unacceptably long waits for refunds. While the IRS may be in desperate need of additional money and staffing, it cannot wait for more resources before it develops plans to address the ongoing backlog. The IRS needs to prioritize its current work, of which processing returns should be one of its highest priorities. This may involve postponing other lesser priority work, but the IRS needs to immediately develop and implement a plan to quickly process this work. As we prepare to enter into another filing season, taxpayers cannot afford to wait for refunds they should have received months ago, and the IRS cannot afford to keep carrying over millions of unprocessed returns from year to year.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Provide weekly filing season reports on IRS.gov about the status of return processing timeframes so taxpayers know what to expect when they file their returns.
2. Improve online resources to provide taxpayers with specific information about the cause of the taxpayer's refund delay, what information the taxpayer needs to provide, and a reasonable estimate regarding when the IRS expects to issue the refund.
3. Implement electronic amended return processing to eliminate the delays caused by traditional paper processing.
4. Immediately develop and issue guidance for the processing of Forms 941-X claiming COVID-19 employment tax relief.
5. Create a dedicated team to process Forms 1139 and 1045 within 90 days of filing.
6. Authorize the use of secure email within the campuses for return processing issues, taxpayer questions, or follow up with taxpayers.
7. Expand current online account offerings to allow taxpayers to upload documents necessary to resolve any issues associated with their tax returns.
8. Suspend all automated collection notices until the IRS is current on processing original and amended returns and unprocessed correspondence.

## Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Sufficiently fund the IRS to allow full staffing of Submission Processing and Accounts Management functions so the IRS is not forced to continually shift resources among competing priorities.
2. Fully fund the IRS's information technology modernization needs to allow for expedited processing of original and amended tax returns.
3. For FY 2022, provide TAS with additional funding in line with the overall percentage increase in IRS funding.
4. If legislation passes and increases the IRS's enforcement budget by roughly half over currently appropriated levels, provide a minimum 50 percent increase in TAS's annual budget over the ten-year period to ensure TAS has adequate staffing to help address the downstream consequences of increased enforcement and to identify new systemic problems resulting from the increased enforcement so that TAS can advocate for solutions.

## Endnotes

- 1 See National Taxpayer Advocate Fiscal Year 2022 Objectives Report to Congress 1 (*Review of the 2021 Filing Season*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/06/JRC22\\_FullReport.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/06/JRC22_FullReport.pdf).
- 2 IRS, Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited Dec. 20, 2021). As of December 18, 2021, W&I reported a total of 3.7 million paper business returns which remained unprocessed. IRS, Status of Unopened Mail and Backlog Inventory - Issued December 24, 2021.
- 3 See Most Serious Problem: *IRS Recruitment, Hiring, and Training: The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration*, *infra*.
- 4 Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2021-46-023, *Results of the 2020 Filing Season and Effects of COVID-19 on Tax Processing Operations* 5 (Mar. 22, 2021).
- 5 IRS, Math Error Report Cycle 37 (ending Sept. 16, 2021) (considering Taxpayer Notice Codes 681, 682, and 683).
- 6 See Most Serious Problem: *Filing Season Delays: Millions of Taxpayers Experienced Difficulties and Challenges in the 2021 Filing Season*, *infra*.
- 7 *Id.* IRS Submission Processing deems a return as "processed" when all the steps necessary to post the return to the account have been taken.
- 8 Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2021-46-023, *Results of the 2020 Filing Season and Effects of COVID-19 on Tax Processing Operations* 5 (Mar. 22, 2021).
- 9 See National Taxpayer Advocate 2019 Annual Report to Congress 23-33 (Most Serious Problem: *IRS Funding: The IRS Does Not Have Sufficient Resources to Provide Quality Service*).
- 10 IRS, New Mailing Address for Some Western States as Fresno, California, Paper Tax Return Processing Center Closes (Sept. 14, 2021), <https://www.irs.gov/newsroom/new-mailing-address-for-some-western-states-as-fresno-california-paper-tax-return-processing-center-closes>.
- 11 CIS data for full CY 2018, 2019, 2020, and 2021 through Nov. 22, 2021. Includes Aug. 2020 through Nov. 30, 2020 receipts when Modernized e-File shut down for the year.
- 12 See Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178 (2020); Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (2020); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020); and American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (2021).
- 13 CARES Act, Pub. L. No. 116-136, §§ 2303-2305, 134 Stat. 281, 352-357 (2020).
- 14 Rev. Proc. 2020-24 (2020); IRS, IR-2020-67, IRS provides guidance under the CARES Act to taxpayers with net operating losses (Apr. 9, 2020), <https://www.irs.gov/newsroom/irs-provides-guidance-under-the-cares-act-to-taxpayers-with-net-operating-losses>.
- 15 *Id.*
- 16 IRS, Compliance Data Warehouse (CDW), Business Master File (BMF). Forms 1139 received in CY 2020 (data as of Nov. 25, 2021).
- 17 See IRC § 6411(b).
- 18 IRS, CDW, Individual Master File and BMF. Forms 1045 and 1139 received in CY 2020.
- 19 IRS, Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited Dec. 20, 2021).
- 20 See Instructions for Form 941-X (July 2021).
- 21 IRS, Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited Dec. 20, 2021). The IRS reports that staff in Cincinnati and Ogden trained to work COVID-19 credits are working the inventory.
- 22 In this case, the taxpayer filed a claim for the Employee Retention Credit as part of his or her 941 filing in June 2020. After not receiving the credit amount, he or she reached out to TAS for assistance in early 2021. After TAS sent the OAR in June, the IRS said the OAR would have to remain in inventory until it provided guidance on working Employee Retention Credit cases. In July, TAS was

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- told that the IRS now had guidance to work the case, but then in August, the IRS asked TAS for an additional extension while waiting to hear if the case was workable. The IRS gave the same response in September when it indicated that there was no guidance available on working the case. Again, this was more than a year after the CARES Act was passed. Typically, when TAS lacks the statutory or delegated authority to resolve a taxpayer's problem, TAS coordinates with the responsible IRS Business Operating Division (BOD)/function and advocates for resolution by issuing an OAR. See TAS Case Advocacy, *infra*.
- 23 IRS, Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited Dec. 20, 2021).
  - 24 See Most Serious Problem: *Transparency and Clarity: The IRS Lacks Proactive Transparency and Fails to Provide Timely, Accurate, and Clear Information*, *infra*.
  - 25 See IRS, Where's My Refund?, <https://www.irs.gov/refunds> (last visited Dec. 27, 2021); IRS, Where's My Amended Return?, <https://www.irs.gov/filing/wheres-my-amended-return> (last visited Dec. 27, 2021); IRS, IRS2Go Mobile App, <https://www.irs.gov/newsroom/irs2goapp> (last visited Dec. 27, 2021).
  - 26 See, e.g., Erin M. Collins, Lifecycle of a Tax Return, NATIONAL TAXPAYER ADVOCATE BLOG (May 18, 2021), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-lifecycle-of-a-tax-return/>.
  - 27 Ashlea Ebeling, Average Tax Refund Up 11% In 2021, FORBES (Nov. 1, 2021), <https://www.forbes.com/sites/ashleaebeling/2021/11/01/tax-refunds-up-11-in-2021/?sh=6ddd2e0f7739>.
  - 28 Diane Wilson & Bella Caracta, "I am Needing the Money Right Now to Pay on My Mortgage": Taxpayers Still Waiting for 2020 Refund, ABC11.COM (Nov. 5, 2021), <https://abc11.com/wheres-my-refund-2020-tax-irs-status/11201371/>.
  - 29 *Id.*
  - 30 See Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*, *infra*.
  - 31 @LindseyStarrett, TWITTER (Nov. 1, 2021, 6:11 PM), <https://twitter.com/LindseyStarrett/status/1455296366624788483?s=2>.
  - 32 IRS, Form 911, Request for Taxpayer Advocate Service Assistance 3 (May 2019).
  - 33 Data obtained from Taxpayer Advocate Management Information System (TAMIS) (Oct. 1, 2020; Oct. 1, 2021).
  - 34 Internal Revenue Manual (IRM) 13.16.17.1.2, Primary Core Issue Code (Aug. 14, 2020) (stating the primary core issue code is a three-digit code that defines the most significant issue, policy, or process within the IRS that underlies the cause of the taxpayer's problem).
  - 35 Data obtained from TAMIS (Oct. 1, 2020; Oct. 1, 2021). The "Other TAS Receipts" category encompasses the remaining issues not in the top ten. Unpostables and Rejects cases involve errors made when filing returns cause the IRS to have to request additional information from the taxpayer before the IRS is able to process the return. Pre-Refund Wage Verification Hold is the IRS program to detect and prevent non-identity theft refund fraud. See IRM 25.25.3.1(1), Program Scope and Objectives (Aug. 30, 2019).
  - 36 Unpostable tax returns are commonly caused by problems with the taxpayer's identification number, name, or both. Reject returns include a missing schedule or missing form such as Form 8962, Premium Tax Credit, or Form 1095-A, Health Insurance Marketplace Statement. Both forms are necessary for reconciling the Premium Tax Credit with the Advance Premium Tax Credit.
  - 37 For the period between April through September, TAS cases received from congressional offices increased nearly 345 percent from FY 2019 to FY 2020. See TAS Case Advocacy: *IRS Processing Delays Challenge TAS's Already Limited Resources and Impact the Ability to Promptly Assist Taxpayers*, *infra*. Data obtained from TAMIS (Apr. 1, 2019; Oct. 1, 2019; Apr. 1, 2020; Oct. 1, 2020).
  - 38 Data obtained from TAMIS (Oct. 1, 2020; Oct. 1, 2021). Unpostables and Rejects cases involve errors made when filing returns cause the IRS to have to request additional information from the taxpayer before the IRS is able to process the return.
  - 39 Typically, when TAS lacks the statutory or delegated authority to resolve a taxpayer's problem, TAS coordinates with the responsible IRS BOD/function and advocates for resolution by issuing an OAR. When an OAR is not sufficient to resolve the case or when time is of the essence, TAS may issue a TAO. The TAO is a powerful statutory tool delegated by the National Taxpayer Advocate to Local Taxpayer Advocates (LTAs) to resolve taxpayer cases. IRC § 7811(f) states that for purposes of this section, the term "National Taxpayer Advocate" includes any designee of the National Taxpayer Advocate. See IRM 1.2.2.12.1 Delegation Order 13-1 (Rev. 1), Authority to Issue, Modify or Rescind Taxpayer Assistance Orders (Mar. 17, 2009). LTAs issue TAOs to order the IRS to take certain actions, cease certain actions, or refrain from taking certain actions. IRC § 7811(b)(2); Treas. Reg. § 301.7811-1(c)(2); IRM 13.1.20.3, Purpose of Taxpayer Assistance Orders (Dec. 15, 2007). A TAO may also order the IRS to expedite consideration of a taxpayer's case, reconsider its determination in a case, or review the case at a higher level. Treas. Reg. § 301.7811-1(c)(3); IRM 13.1.20.3, Purpose of Taxpayer Assistance Orders (Dec. 15, 2007).
  - 40 On February 26, 2021, TAS issued 412 TAOs to the IRS Submission Processing function ordering the IRS to fully process the paper return (original, amended, or superseding) filed by the taxpayer within 30 days. As of September 30, 2021, the IRS complied with 345 of the 412 TAOs in an average of 68 days, TAS rescinded one TAO, and 66 remain open. On May 3, 2021, TAS issued 55 TAOs to the IRS Submission Processing function ordering the IRS to fully process amended returns filed by the taxpayer. As of September 30, 2021, the IRS has complied with 34 of the 55 TAOs in an average of 50 days, TAS rescinded five of the TAOs, and 16 remain open.
  - 41 FY 2017 and FY 2021 IRS Snapshot Report.
  - 42 See, e.g., Erin M. Collins, IRS Delays in Processing Amended Tax Returns Are Impacting TAS's Ability to Assist Taxpayers, NATIONAL TAXPAYER ADVOCATE BLOG (November 10, 2021).
  - 43 IRS, Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited Dec. 20, 2021).
  - 44 The TAD also directed the IRS to provide weekly updates to TAS on the progress in processing these returns and post weekly updates on IRS.gov.
  - 45 The IRS states that its approach to addressing the amended returns backlog includes:
    1. Maintaining timely inventory control—We recently controlled the remaining Form 1040X inventory and improved processes so receipts are controlled within five days. We will maintain this time frame going forward. When the forms are controlled, an indicator is placed on the taxpayer's account, allowing taxpayers to know the form has been received and to monitor the status using Where's My Amended Return on [irs.gov](https://www.irs.gov). The control provides transparency for the taxpayer and IRS employees.
    2. Hiring more tax examiners—W&I is hiring 750 tax examiners to address amended returns and paper inventories. Tax examiners do not have telephone requirements as part of their duties and will work paper inventories full-time.
    3. Overtime—As allowed under the Continuing Resolution, we will continue to offer overtime to employees to work amended returns.
    4. Explore flexibilities in use of CSR resources—In addition to hiring and overtime, we will closely monitor telephone demand and use our CSR resources to work amended returns and another inventory.

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5. Create a surge team—W&I will partner with other business units to solicit employees with prior amended return experience that can assist with reducing the inventory.
- 46 See Most Serious Problem: *IRS Recruitment, Hiring, and Training: The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration*, *infra*.
- 47 Memorandum from Douglas O'Donnell to Erin Collins; Taxpayer Advocate Directive (TAD) 2021-2 (Dec. 8, 2021).
- 48 *Id.*
- 49 ARPA authorized the IRS to issue monthly AdvCTC payments to eligible taxpayers with qualifying children. IRS, 2021 Child Tax Credit and Advance Child Tax Credit Payments – Topic A: General Information, <https://www.irs.gov/credits-deductions/2021-child-tax-credit-and-advance-child-tax-credit-payments-topic-a-general-information> (last visited Dec. 2, 2021). IRS, About Schedule 8812 (Form 1040), Additional Child Tax Credit, <https://www.irs.gov/forms-pubs/about-schedule-8812-form-1040> (last visited Dec. 2, 2021).

## IRS RECRUITMENT, HIRING, AND TRAINING: The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration

### WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Taxpayers are experiencing delays in getting their returns processed and receiving their refunds. Their phone calls to the IRS often go unanswered. Budget cuts, an aging workforce, and often complicated hiring processes have left the IRS severely understaffed and unable to adequately recruit, hire, and train much-needed new employees. Inadequately trained IRS employees may give taxpayers incorrect information, make erroneous determinations, or record inaccurate information in IRS databases. Employees are outnumbered by taxpayers and their representatives as they deal with complex returns or audits. The ongoing problems surrounding recruitment and hiring compromise the IRS's ability to deliver tax benefits, provide taxpayer services, and collect revenue, which may cause the tax gap to widen, eroding confidence in the tax system and over time leading to noncompliance. As the single agency responsible for generating approximately 95 percent of the gross revenue for the federal government, the IRS's ability to attract, hire, and train employees is critical to maintaining operations, providing quality service, and protecting taxpayer rights.<sup>1</sup>

### EXPLANATION OF THE PROBLEM

The IRS's budget was reduced by nearly 20 percent in inflation-adjusted dollars from 2010 to 2021.<sup>2</sup> In fiscal year (FY) 2020, the IRS had 75,773 full-time equivalent (FTE) positions, a decrease of about 20 percent from 94,711 FTE positions in FY 2010.<sup>3</sup> Between FY 2010 and FY 2020, the IRS lost over 33,000 full-time personnel, which included nearly 13,400 key enforcement personnel.<sup>4</sup> Over time as IRS staffing declined, the taxpayer population increased, and as changes were made in the tax laws, the tax gap increased. According to the Department of the Treasury, the gross tax gap – the difference between taxes paid and taxes owed – is estimated to have totaled about \$580 billion in 2019, up from an estimated amount of nearly \$440 billion in 2013, and is expected to rise to about \$7 trillion by 2029 if left unaddressed.<sup>5</sup>

Over the past year, the IRS faced several staffing-related challenges. In FY 2021, largely due to the pandemic, the IRS saw the lowest telephone Level of Service (LOS) on record, which it must address through a combination of measures, including additional online capabilities and personnel.<sup>6</sup> Staffing challenges also impacted the filing season backlogs in the past year.<sup>7</sup> As the IRS Commissioner declared, “the status quo is untenable.”<sup>8</sup> If the IRS is not adequately funded, it will face challenges in not only maintaining the status quo but also in attracting talent and training its employees, which is an unacceptable scenario.

Realizing the challenges the IRS faces, especially as it focuses on reducing the tax gap, the current administration plans to increase the IRS budget by nearly \$80 billion over the next ten years.<sup>9</sup> With this possible new funding, the IRS is seeking to hire a significant number of new employees.<sup>10</sup> However, any new funding will not immediately solve the issues plaguing the IRS because the IRS will first need to recruit, hire, and train these new employees, who will require substantial training before they can contribute to the IRS's mission.<sup>11</sup> The IRS has recently made progress to address some of these challenges.<sup>12</sup> For example:

- In line with our prior recommendations, the IRS has hired a recruitment team of 22 staff members and plans to hire ten additional full-time dedicated recruiters. As of September 15, 2021, the



IRS had hired an additional 206 hiring support staff positions and external contractors to support employment operations;<sup>13</sup>

- In line with our prior recommendations, the IRS submitted two requests seeking Treasury's support in obtaining direct-hire authority from the Office of Personnel Management (OPM) to meet critical hiring needs. As of August 9, 2021, both requests were still under consideration at OPM;<sup>14</sup>
- In line with our prior recommendations, the IRS developed a legislative proposal to expand the streamlined critical pay authority beyond current authority given for certain information technology (IT) positions, and as of August 9, 2021, the proposal was awaiting consideration from the Department of the Treasury;<sup>15</sup>
- Effective October 1, 2021, the IRS's new collective bargaining agreement allows the IRS to announce certain entry-level positions externally without having to announce them internally first.<sup>16</sup> This change adopts a prior TAS recommendation and will allow the IRS to expand the number of applicants for jobs, more readily recruit from outside the agency, and speed up the hiring process;<sup>17</sup>
- The Human Capital Office (HCO) simplified the hiring announcement process by allowing for one announcement to be posted for positions in multiple areas and Business Operating Divisions (BODs) across the IRS;<sup>18</sup>
- For positions above entry-level, the IRS has streamlined the hiring process by limiting the time applicants have to respond to job offers and improving the rating and ranking processes;<sup>19</sup> and
- The IRS has implemented USA Staffing (USAS),<sup>20</sup> a new OPM application aimed at improving federal hiring, tracking, and reporting processes, which will replace the previous application, Career Connector.<sup>21</sup>

The Most Serious Problems discussed in this report are the direct result of the IRS's lack of sufficient staffing and training. These continued deficiencies have manifested themselves in all aspects of IRS operations and are negatively affecting taxpayers and tax administration. From pre-filing services to return processing and exam and collection activities, taxpayers are not receiving the level of service they need and deserve. The IRS can and must improve internal hiring and recruitment processes. Even if the IRS perfects its internal processes, external limitations on the IRS still pose challenges difficult to overcome without additional support and flexibilities provided to the IRS by Congress, the Department of the Treasury, OPM, and the National Treasury Employees Union (NTEU). Once the IRS hires employees, they will need significant training. The IRS will need sustained multiyear funding and more hiring flexibilities.

## ANALYSIS

### The Human Capital Office Needs More Funding and Personnel to Meet Future Hiring and Training Needs and to Mitigate Potential Workforce Losses

IRS hiring is centralized under HCO, including staffing that supports hiring and training in IRS BODs. Despite recent hiring, HCO lacks the capacity to meet the projected increase in hiring and training requests over the next ten years.<sup>22</sup> Currently, HCO can process approximately 2,600 hiring actions each month.<sup>23</sup>

For comparison, Figure 2.2.1 outlines the hiring activities of the IRS over the past two fiscal years. While 2,600 hiring actions a month may seem like a lot, this number includes many types of activities beyond just hiring, including temporary promotions and reassignments. Factoring in that much of this hiring – like the over 11,000 positions that the IRS Wage and Investment (W&I) Division plans to fill in FY 2022 – needs to take place over a month or two to prepare for the filing season, the IRS simply does not have enough HCO staffing to meet its needs.<sup>24</sup>

As illustrated in Figure 2.2.1, in the past two fiscal years, the IRS lost 2,986 and 3,852 employees, respectively, due to retirement.<sup>25</sup> The IRS is already struggling with keeping up with the pace of attrition because the sum of separations and retirements is more than but still close to the number of IRS external hires.

**FIGURE 2.2.1, IRS Human Capital Office Processing of Hires, Non-Retirement Separations, and Retirements for FYs 2020 and 2021<sup>26</sup>**

	FY 2020	FY 2021
Total External Hires	11,274	12,420
Non-Retirement Separations	8,775	10,610
Retirements	2,986	3,852
Sum of Non-Retirement Separations and Retirements	11,761	14,462
Total Hires (Internal and External)	16,282	16,704

The IRS predicts that it will have 5,590 retirements within the next year.<sup>27</sup> It has 16,928 employees eligible to retire, which will increase to 19,825 employees eligible to retire next year.<sup>28</sup> These are all positions that will need to be filled to maintain the status quo in addition to any new hiring the IRS plans. The COVID-19 vaccine mandate will add to the hiring process as the IRS will need to validate vaccination statuses of new hires. Without additional resources, HCO likely cannot meet the IRS's hiring needs.

### **The IRS Needs to Shorten Hiring Time to Expeditiously Bring on New Employees**

Besides the lack of sufficient resources, the current hiring process remains lengthy and burdensome. OPM has set a time-to-hire goal – measured by the number of days that elapse after a request to hire is sent to an agency's Human Resources function until the day of a new employee's entrance on duty – of 80 calendar days.<sup>29</sup> The IRS is competing for talent with the private sector, and a hiring process with a goal of taking more than ten weeks is too lengthy to allow the IRS to be competitive.<sup>30</sup> The IRS's overall hiring process consists of five phases, and the IRS has set up goals for the number of days in each phase.<sup>31</sup> The IRS's time-to-hire actually averaged about 88 days in FY 2021 (about 94 days when hiring external candidates), which is beyond the OPM goal but a significant improvement over the 120 days in FY 2019.<sup>32</sup>

Applicants can see from the USAJOBS platform whether the agency received their application, whether they are eligible for the position, and whether the agency selected them – activities in Stages 3 and 4. Successful external candidates receive a tentative offer as part of Stage 5. The offer letter explains additional requirements the candidates need to fulfill, such as getting their fingerprints taken, and additional requirements the IRS fulfills, such as performing tax compliance checks, but neither the successful applicant nor the BOD can see from IRS databases or “dashboards” which parts of the Stage 5 activities have been carried out and which tasks remain.

The job announcements on USAJOBS, where OPM maintains a central database listing nearly every federal job opening and that is mandated for all agencies to use, can confuse applicants and often become cumbersome to interpret and navigate.<sup>33</sup> According to a March 2020 report by the National Commission on Military, National, and Public Service, compared to private sector job announcements, USAJOBS announcements use too much technical jargon that does not make sense to non-federal employees.<sup>34</sup>

Ultimately, the current hiring process remains lengthy and burdensome, and the IRS should study it to consider ways to reduce cycle times and delays.

### **The Human Capital Office Needs to Increase Automation and Digitization and Reduce Redundancy in the Hiring Process to Reduce Hiring Cycle Time and Delays**

Despite the IRS's recent move to USAS as HCO's reporting and tracking system for hiring, the hiring process still requires a large amount of manual intervention. HCO should consider additional ways to standardize and automate its reports and parts of the hiring process that require an HCO employee to move the process to

the next stage. For example, HCO should provide more real-time automated data with enough detail so IRS hiring officials can easily see which candidates are at which stages. Some manual steps can be automated, such as sending emails or text messages. HCO needs to develop more data-gathering capabilities such as workforce planning and competitive analysis, analysis of hiring trends, and predictive analytics for recruitment of the applicant pool.

There are redundant tasks that HCO needs to eliminate from the process. The IRS often requalifies a candidate for the same job series every time the candidate applies to that job series but in separate locations. The IRS should explore opportunities around developing a process to qualify an applicant for a specific job series only once every year or few years. Once a candidate is qualified for that specific job series, the IRS could place applicants on a “pre-qualified” list for that series that will expire after a set time.<sup>35</sup>

### **The IRS Will Need Additional Hiring Flexibilities and Should Consider Seeking Office of Personnel Management Approval for Special Pay Rates**

One of the best ways to expedite the current hiring process is to allow the IRS additional flexibilities in hiring that bypass some of the most time-consuming and frustrating parts of the hiring process. A new draft policy from OPM allows federal agencies to strategically recruit more students to paid positions in the federal government while in school, with the possibility of later converting them to permanent jobs in the same federal agencies.<sup>36</sup> Students who graduated within the last two years can compete outside of the competitive process for positions that pay up to a General Schedule (GS)-11 salary. This is a good start in allowing the IRS to recruit younger applicants, but alone it will not be enough for the IRS, especially given that the IRS also needs highly trained individuals who may be in the middle or later phase of their career.

OPM serves a crucial role in the IRS hiring process. Its support is necessary to maximize IRS hiring capacity by:

- Ensuring systemic capabilities will meet demand (in OPM’s capacity as owner of the USAS program); and
- Providing a full range of hiring authorities and flexibilities (as allowed under OPM statutory authority).

Additionally, the IRS could take steps that would ease the burden on HCO employees by advocating with OPM for electronic signature approval for health benefit forms.

Pursuant to 5 U.S.C. Section 3304(a)(3), OPM may determine that a severe shortage of candidates exists or that there is a critical hiring need to fill certain positions and use direct-hire authority to address that need. Direct-hire authority refers to hiring individuals into the Competitive Civil Service (GS-15 and below or equivalent) in permanent or nonpermanent positions by bypassing some of the hiring processes to allow for quicker hiring.<sup>37</sup> HCO and IRS BODs work together to request direct-hire authority.<sup>38</sup> First, they must seek approval from the Department of the Treasury, then from OPM, and finally from the Office of Management and Budget (OMB).<sup>39</sup> The process can be lengthy.<sup>40</sup> On March 15, 2021, and May 14, 2021, the IRS submitted two requests for direct-hire authority, but these requests had not been approved as of December 15, 2021.<sup>41</sup>

The IRS has also sought to expand its streamlined critical pay authority, which is the authority to fix the rate of basic pay for one or more positions at a rate higher than the rate that would otherwise be payable for the position to other positions beyond IT.<sup>42</sup> OPM and OMB are considering this request.<sup>43</sup> This would be helpful as the IRS looks to hire not only inexperienced employees but also mid-level and senior-level professionals from the private sector who can lead teams.<sup>44</sup>

In addition to continuing to seek direct-hire authority and streamlined critical pay authority, the IRS should request that OPM exercise its authority to establish higher rates of basic pay – special rates – for a group or

category of GS positions to address existing or likely significant handicaps in recruiting or retaining well-qualified employees.<sup>45</sup> OPM may establish special rates for nearly any category of employee, *i.e.*, by series, specialty, grade level, and/or geographic area. This would allow the IRS to offer more competitive pay and help recruit more applicants for positions with a critical hiring need.

Additionally, the IRS should work with Treasury to advocate for a Department of Homeland Security policy change to allow agencies to permanently inspect documents that demonstrate employment eligibility to work in the United States virtually rather than in person.

The IRS should also continue to request that Congress provide the IRS permanent funding to increase HCO's authorized staffing plan to cover workload throughout the entire employment lifecycle, including securing funding to transfer knowledge from employees scheduled to retire, when needed.<sup>46</sup>

The IRS should advocate that Congress help make the IRS a more attractive employer by adding the IRS to the statutory list of agencies allowed to have certain positions outside of the GS pay scale to better compete with the private sector.<sup>47</sup> Similar to certain federal bank regulatory agencies such as the Securities and Exchange Commission and the Consumer Financial Protection Bureau, the IRS's unique role in collecting federal revenue would make it a perfect candidate to have certain positions placed on the special pay scale, making it a more attractive employer for certain highly technical positions that need specific experience or qualifications.

### **The Human Capital Office Should Devote More Logistical Support and Resources to Recruitment Efforts**

As the IRS looks to improve its hiring process, it similarly needs to strengthen its recruitment efforts to ensure it can find qualified candidates. HCO's Strategic Talent Analytics & Recruitment Solutions (STARS) is the part of HCO that provides support and resources to BODs to achieve recruitment goals.<sup>48</sup> Despite the challenges of the COVID-19 pandemic, the IRS held over 100 virtual information and recruitment events in FY 2021.<sup>49</sup> HCO also expanded partnerships with other agencies such as the Department of Defense's Military Spouse Program and the U.S. Department of Agriculture's Supplemental Nutrition Assistance Program participant program.<sup>50</sup> Under "Lifting Communities Up," the IRS plans to cultivate new opportunities for adults and students in underserved communities by partnering with state labor and human services officials to identify talent and design training programs for adult candidates, starting in the Mississippi Delta Region. Additionally, the IRS plans to develop a talent pipeline by partnering with colleges, universities (specifically focusing on historically black colleges or universities and other minority servicing institutions), and high schools to design training programs to prepare participants for IRS careers.<sup>51</sup> TAS commends the IRS's increased efforts in the recruitment arena but also believes there is room for improvement.

HCO should work with the IRS Next Office to develop a plan to use more data analytics to improve recruitment. Currently, BODs are taking the lead, but they cannot systematically recruit across the country for specific locations using data to predict supply and demand. The IRS's plan should be to directly target recruitment at specific locations where IRS jobs need to be filled using a data-driven approach to recruitment. For example, the IRS could create a pilot or proof of concept to assess the efficacy of using a data-driven model for need-based, skill-focused applicant recruitment that can be adapted to different geographic locations. BODs will benefit greatly in their long-term workforce planning if they have this additional data that allows the IRS to make predictions about hiring needs and the location of candidates. Instead of being reactive (*i.e.*, recruiting after there is a vacancy), the IRS can use this data to plan ahead and be proactive (*i.e.*, planning ahead using modeling techniques to predict future needs, future supply, and more targeted recruitment).

Additionally, the HCO STARS team should supply additional logistical support for BOD recruitment events. We heard from some BOD subject matter experts that they would benefit from more agencywide recruitment

events and from access to professional branding and marketing materials (*i.e.*, hiring booth display items and materials to distribute to applicants). BOD hiring officials would also benefit from additional awareness or communication about available hiring flexibilities and other resources to support their recruitment efforts. Providing routine hiring and recruitment related training to BOD hiring officials would dramatically improve the communication efforts between HCO and BODs and add efficiency in hiring and recruiting processes.<sup>52</sup> STARS should develop a communication plan or routine training to increase awareness among BOD hiring officials of available hiring flexibilities.

STARS should also collaborate with BODs to improve their external-facing career pages. These pages, geared toward applicants, should:

- Be easy to find and include opportunities for candidates to learn more about the agency, the posted position, the division, and their career ladder;
- Include employee testimonials or spotlights that allow candidates to connect with and identify with potential future colleagues; and
- Include a general FAQ section so applicants to IRS jobs can have questions answered before applying and include tailored responses with further information on IRS work culture and benefits and explain what to expect from the unique government hiring process. This will aid applicants in navigating the often-confusing job postings on USAJOBS with technical jargon that external candidates find unfamiliar.

These features will help the IRS with internet exposure and search engine optimization if these career pages are widely linked to announcements and job boards. As these pages receive multiple unique hits on the internet, pushing IRS career-related keywords further up in internet search engines, they can lay the groundwork for a more expansive IRS digital advertising strategy.

While the focus on recruiting entry-level employees is much-needed, there also needs to be an improved strategy for recruitment of mid-level and senior-level employees. Every employee is an IRS ambassador, and recruiting should be each employees' responsibility and honor to build the workforce of the future. The IRS should continue to leverage its relationships with professional organizations, focus on its brand development, and encourage current employees in assisting with hiring the right applicants via a referral payment plan – which would be a worthwhile investment for the IRS.<sup>53</sup> We encourage the IRS to increase these efforts whether or not additional funding becomes available. There may be many potential applicants in the IRS employees' networks. For the IRS to meet hiring demand, it must be able to recruit the right quality and quantity of applicants promptly, which requires that it share its vision for the future, improve its brand, and dramatically ramp up recruitment efforts.

### **The IRS Needs to Reexamine Its Training and Establish a First-Class Program**

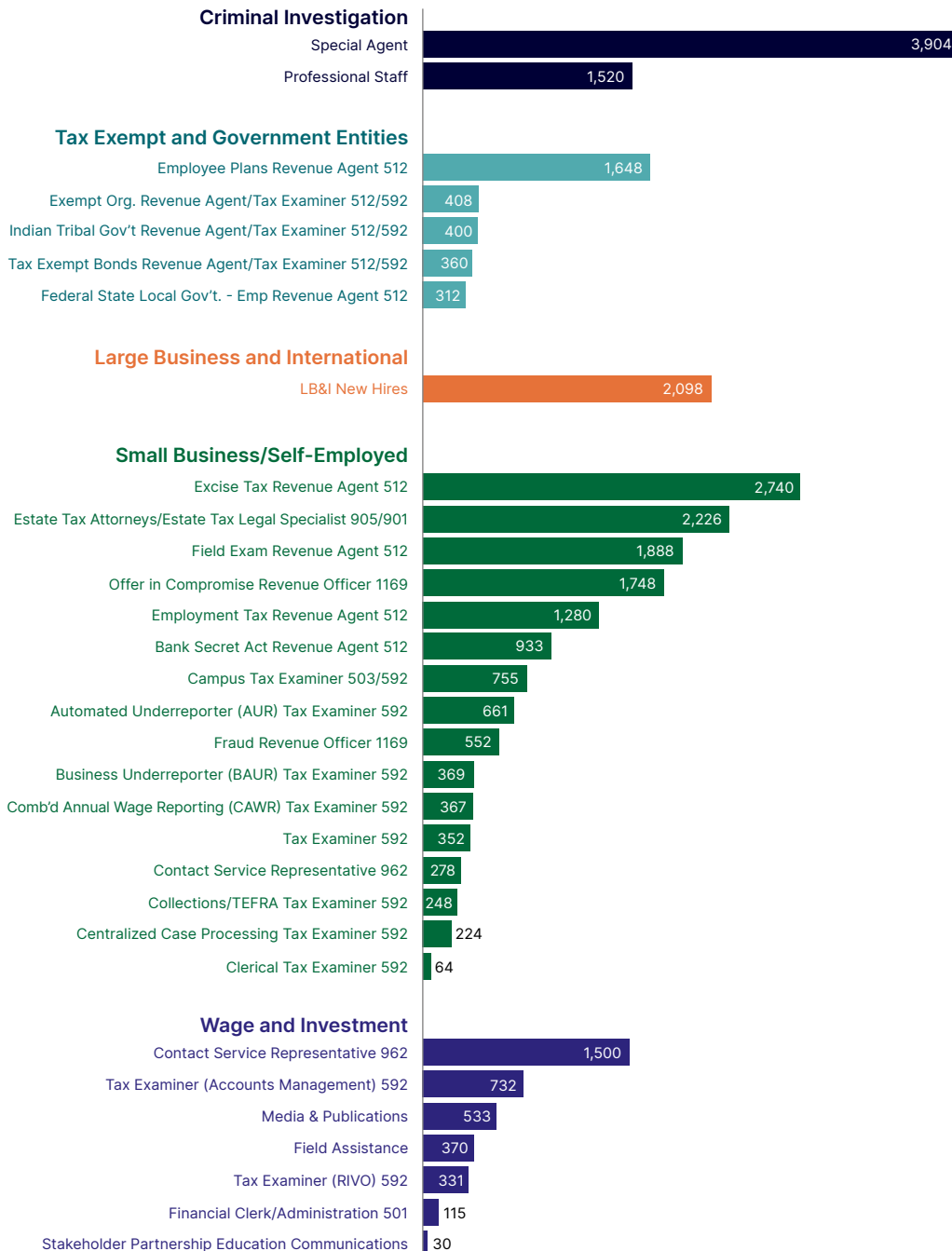
Once the IRS does hire, new employees are only as valuable as the timeliness and quality of training they receive. The IRS is in the process of developing and implementing a comprehensive training strategy as described in the IRS's Taxpayer First Act Report to Congress.<sup>54</sup> As the IRS develops its current training program, we recommend working with outside accounting firms, law firms, and other large organizations to exchange ideas and best practices. The revised training program should provide IRS employees a solid knowledge base and practical experience, and throughout their careers continue to develop their technical skills and provide career path options to grow and develop professionally.<sup>55</sup> As OMB notes, training and development are among the most critical areas that contribute to the success of an organization and its workforce in carrying out its mission.<sup>56</sup> IRS employees receive extensive training, which takes time and resources. We welcome and encourage the IRS revisiting the current training program and developing its employees with an eye toward the workforce and the IRS of the future. This should translate to providing quality service, being cognizant of taxpayer rights, and the desire to do the right thing for tax administration.

Overall, in each fiscal year 2015-2020, the IRS delivered between 3.6 and 4.6 *million* hours of training.<sup>57</sup> The cost of the training ranged from \$31 million to \$48 million.<sup>58</sup> It is a major investment in our employees, and it is important to deliver the best training possible. We are the IRS. We should have a first-class tax training program and set the bar for others to follow.

As demonstrated in Figure 2.2.2, the time – in both classroom-type training and on-the-job training – to train certain critical IRS positions is lengthy.<sup>59</sup>

**FIGURE 2.2.2<sup>60</sup>**

### Training Hours Required for Certain IRS Employee Positions





As Figure 2.2.2 shows, new employees need substantial training before they can do their jobs.<sup>61</sup> For example, a W&I Customer Service Representative (Position Series 962) needs 1,500 hours of training. At 40 hours per week, this amounts to 37.5 weeks, or more than nine months. A Small Business/Self-Employed (SB/SE) Revenue Agent (Position Series 512) in Field Examination requires 1,888 hours of training, which amounts to almost a year. Beyond these core training requirements, it takes time for employees to develop into experienced employees – four to five years, for example, to train a new hire to become an experienced senior or expert Revenue Officer.<sup>62</sup> The practical implication of this is that even if the IRS hired 5,000 new employees on January 1, it would be months – and sometimes more than a year – for those employees to be trained. This is why the continued underfunding of the IRS has had such a detrimental effect and why consistent increased funding is necessary for taxpayers to see an improvement in service and for the IRS to dig out of the hole in which it currently finds itself.

**Training is a major investment in our employees, and it is important to deliver the best training possible. We are the IRS. We should have a first-class tax training program and set the bar for others to follow.**

## CONCLUSION AND RECOMMENDATIONS

Recruiting, hiring, and training employees takes time and requires continued multiyear funding. Under the administration's proposed budget increase for the IRS, IRS staffing would be more than doubled from current levels by 2031, according to the Congressional Budget Office.<sup>63</sup> The IRS will need to work hard to reach this level of staffing. HCO will need more resources to ramp up capacity to process more than the current level of 2,600 hiring request actions per month. Although there are process improvements the IRS can make on its own, the IRS still needs the help of stakeholders. To fairly and efficiently administer the tax laws and supply world-class customer service, the IRS will need additional support and flexibilities provided by Congress, the Department of the Treasury, OPM, and NTEU. Both Congress and OPM play key roles in assisting the IRS with improving its hiring and recruitment processes. With this continued support and improved internal efficiencies, over time the IRS can finally catch up to attrition, replenish the workforce losses incurred over the past decade, and recruit and "cultivate a well-equipped, diverse, flexible, and engaged workforce."<sup>64</sup>

## Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that:

1. HCO develop a process to qualify an applicant for a specific job series periodically, *e.g.*, only once every year, which allows applicants to update their information as needed while meeting the requirements of the series. Once qualified for that specific job series, the applicant can be placed on a "prequalified" list for that series that will expire after a set time period, instead of going through the qualification process repeatedly for positions in that series.
2. HCO continue to seek critical pay authority for additional positions beyond IT.
3. HCO continue to seek direct-hire authorities for critical positions to meet the demand of the hiring surge expected in FY 2022 and beyond, under the administration's proposal.<sup>65</sup>
4. HCO and IRS Next prepare and submit OPM Form 1397, Special Salary Rate Request Form, to request that OPM establish higher rates of basic pay or special rates for a group or category of GS positions.
5. HCO improve its communications strategy with BODs and with successful applicants to keep both informed of which activities have been completed and which remain for that applicant, throughout the hiring process.

6. HCO, in consultation with the IRS Next Office and other relevant IRS offices, develop a plan to use data analytics to improve IRS recruitment efforts.
7. The HCO STARS team supply more logistical support to BODs for recruitment events.
8. STARS collaborate with BODs to improve their external-facing career pages geared toward applicants to describe agency functions, job responsibilities, division roles, potential career ladders, and employee testimonials or spotlights.
9. HCO periodically administer short surveys (“pulse surveys”) to employees to help ensure HCO is building the partnership it needs with other parts of the IRS to improve its hiring processes and successfully implement its new training strategy.
10. The IRS continue to work with OPM to maximize IRS hiring capacity by ensuring systemic capabilities will meet demand (in OPM’s capacity as owner of the USAS program); by providing a full range of hiring authorities and flexibilities (as allowed under OPM statutory authority); and by advocating with OPM for electronic signature approval for health benefit forms.
11. The IRS continue to work with Treasury to advocate for a Department of Homeland Security policy change to allow agencies to permanently inspect I-9 documents virtually rather than in person.
12. The IRS continue to request Congress provide permanent funding to increase HCO’s authorized staffing plan to cover workload throughout the entire employment lifecycle, including securing funding to dual encumbering positions to transferring knowledge from employees scheduled to retire, when needed.
13. In developing its training program, the IRS work with outside accounting firms, law firms, and other large organizations to learn best practices.

### Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide dedicated multiyear funding for IRS hiring, recruitment, and employee training so the IRS can replenish the workforce losses incurred over the past decade.<sup>66</sup> Congress should provide the IRS permanent funding to increase HCO’s authorized staffing plan to cover workload throughout the entire employment lifecycle, including securing funding to dual encumber positions to transfer knowledge from employees scheduled to retire, when needed.

### RESPONSIBLE OFFICIALS

Kevin McIver, IRS Human Capital Officer  
Heather Maloy, Director, IRS Next Office

### IRS COMMENTS

The IRS is committed to building a highly trained, engaged workforce to administer tax laws and provide fair and equitable services to our nation’s taxpayers. As the Report notes, in FY 2021 we took several steps in anticipation of the significant hiring we expect to do over the next several years, including:

- Increasing staffing on our recruitment and employment teams.
- Negotiating additional flexibilities in our collective bargaining agreement with the National Treasury Employees Union that enable us to hire external candidates more quickly and effectively.

- Implementing USA Staffing, an online interface for applicants, hiring managers and HR professionals that will improve the job application experience, reduce the workload of staffing specialists, and deliver improved data analytics.
- Continuing to reduce our time-to-hire from approximately 120 days in FY 2020 to 88 days in FY 2021.

The IRS is developing strategies focused specifically on effecting transformative change in the areas of recruiting, hiring, and training. Regarding recruitment, we plan to deploy a comprehensive strategy that will help us attract the best candidates. We expect that this strategy will enable us to apply an enterprise approach to recruitment and make better use of data.

Our employees are the strength of the IRS and investments in their training and career advancement remains a significant overall priority. The Advocate calls on the IRS to aim for a “first-class program” for training our employees. Our vision in this area, which we believe meets that challenge, is a corporate university model, which we call the “IRS University” (IRSU). The IRSU will empower our workforce by equipping employees with the skills and tools needed to advance their careers, provide high-quality service to taxpayers, and ultimately enhance the taxpayer experience. The IRSU will be a modern and innovative learning organization focused on leveraging technology, promoting continuous learning, and providing developmental opportunities supporting our employees’ career goals. We will use an industry-leading model to obtain relevant feedback from employees, taxpayers and key stakeholders and drive continuous improvement in IRS training and development activities. This year, we made great progress toward establishing the IRSU. For example, we hired personnel, acquired a new virtual learning platform, conducted environmental scans, and established a funding model.

For the next several years and beyond, our ability to recruit, hire, and train a world-class workforce will be critical to our success. We look forward to continuing to enhance collaboration across the IRS and continuing to expand and strengthen external partnerships to attract and retain the best and the brightest talent to support the IRS mission and improve efficiencies across the enterprise.

## TAXPAYER ADVOCATE SERVICE COMMENTS

TAS appreciates and has noted the IRS’s efforts to date. However, based on our analysis, including surveys of HCO customers from across the IRS, more needs to be done. Specifically, there is concern about the time it takes to bring a candidate on board, and customers also believe that improvements need to be made regarding HCO’s communication and transparency with the BODs. We encourage the IRS to continue to improve its training program and develop its employees with an eye toward the workforce and the IRS of the future. TAS recommends the IRS use more data analytics to improve recruitment and consider additional ways to standardize and automate hiring reports. Additionally, TAS encourages the HCO STARS team to consider ways to provide additional logistical support for BOD recruitment events and to work with BODs to improve their external-facing career pages. Ultimately, as we stated, the IRS needs support from all stakeholders including OPM and Congress. Therefore, we encourage the IRS to continue to request that Congress and OPM provide the IRS additional hiring flexibilities as needed. Our administrative and legislative recommendations

are aimed at further strengthening IRS efforts and addressing all of these issues. TAS is aware that the IRS is still in the planning phase in some areas, and we are looking forward to reviewing IRS comprehensive strategies and the implementation of those strategies in the areas of recruiting, hiring, and training. TAS will continue to advocate with internal and external stakeholders that the IRS receive the support and flexibilities it needs to meet its hiring needs so it can better serve taxpayers. And TAS will continue to offer insight and collaborate with the IRS so the IRS can achieve its mission of providing quality service and protecting taxpayer rights.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that:

1. HCO explore opportunities around developing a process to qualify an applicant for a specific job series periodically, *e.g.*, only once every year, which allows applicants to update their information as needed while meeting the requirements of the series. Once qualified for that specific job series, the applicant can be placed on a “prequalified” list for that series that will expire after a set time period, instead of going through the qualification process repeatedly for positions in that series.
2. HCO continue to seek critical pay authority for additional positions beyond IT.
3. HCO continue to seek direct-hire authorities for critical positions to meet the demand of the hiring surge expected in FY 2022 and beyond, under the administration’s proposal.<sup>67</sup>
4. HCO and IRS Next prepare and submit OPM Form 1397, Special Salary Rate Request Form, to request that OPM establish higher rates of basic pay or special rates for a group or category of GS positions.
5. HCO improve its communications strategy with BODs and with successful applicants to keep both informed of which activities have been completed and which remain for that applicant, throughout the hiring process.
6. HCO, in consultation with the IRS Next Office and other relevant IRS offices, develop a plan to use data analytics to improve IRS recruitment efforts.
7. HCO STARS supply more additional logistical support to BODs for recruitment events than is already being provided, including more agencywide recruitment events and access to additional professional branding and marketing materials (*i.e.*, hiring booth display items and materials to distribute to applicants).
8. HCO STARS collaborate with BODs to improve their external-facing career pages geared toward applicants to describe agency functions, job responsibilities, division roles, potential career ladders, and employee testimonials or spotlights.
9. HCO periodically administer short surveys (“pulse surveys”) to employees to help ensure HCO is building the partnership it needs with other parts of the IRS to improve its hiring processes and successfully implement its new training strategy.
10. The IRS continue to work with OPM to maximize IRS hiring capacity by ensuring systemic capabilities will meet demand (in OPM’s capacity as owner of the USAS program); by providing a full range of hiring authorities and flexibilities (as allowed under OPM statutory authority); and by advocating with OPM for electronic signature approval for health benefit forms.
11. The IRS continue to work with Treasury to advocate for a Department of Homeland Security policy change to allow agencies to permanently inspect I-9 documents virtually rather than in person.

12. The IRS continue to request Congress provide permanent funding to increase HCO's authorized staffing plan to cover workload throughout the entire employment lifecycle, including securing funding to dual encumber positions to transfer knowledge from employees scheduled to retire, when needed.
13. The IRS, in developing its training program, work with outside accounting firms, law firms, and other large organizations to learn best practices.

### Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide dedicated multiyear funding for IRS hiring, recruitment, and employee training so the IRS can replenish the workforce losses incurred over the past decade and build the workforce of the future to provide best in class tax administration and provide quality service.<sup>68</sup> Congress should provide the IRS permanent funding to increase HCO's authorized staffing plan to cover workload throughout the entire employment lifecycle, including securing funding to dual encumber positions to transfer knowledge from employees scheduled to retire, when needed.

### Endnotes

- 1 *The 2019 Tax Filing Season and the 21st Century IRS: Hearing Before the S. Finance Comm.*, 116th Cong. (Apr. 10, 2019) (statement of Charles P. Rettig, Commissioner, Internal Revenue).
- 2 IRS response to TAS information request (Dec. 17, 2021).
- 3 These figures exclude seasonal and part-time employees. FTE is defined by the IRS as the total number of regular straight-time hours worked (*i.e.*, not including overtime or holiday hours) by employees divided by the number of compensable hours applicable to each fiscal year. This excludes positions funded by reimbursements from other federal agencies and private entities for services performed for these external parties. See IRS, 2020 Data Book, Table 31: Collections, Costs, Personnel, and U.S. Population, Fiscal Years 1990-2020 (Oct. 2020).
- 4 IRS, Management's Discussion and Analysis, Fiscal Year 2020. See also IRS, Fiscal Year 2021 Financial Report 99 (Nov. 2021), <https://www.irs.gov/pub/irs-pdf/p5456.pdf>.
- 5 United States Department of the Treasury, *The American Families Plan Tax Compliance Agenda* 1-4 (May 2021). The tax gap figures are estimates by the IRS and the Department of Treasury.
- 6 IRS, Fiscal Year 2021 Financial Report 10 (Nov. 2021), <https://www.irs.gov/pub/irs-pdf/p5456.pdf>.
- 7 *Id.* at 94.
- 8 Charles Rettig, *Opinion: IRS Commissioner: We Desperately Need Resources So the Agency Can Serve You and Our Country*, WASH. POST (Nov. 11, 2021), <https://www.washingtonpost.com/opinions/2021/11/11/irs-commissioner-we-desperately-need-resources-so-agency-can-serve-you-our-country/>.
- 9 See Congressional Budget Office (CBO), *Estimated Revenue Effects of Increased Funding for the Internal Revenue Service in H.R. 5376, the Build Back Better Act* (Nov. 18, 2021), <https://www.cbo.gov/system/files/2021-11/57620-IRS.pdf>. See also United States Department of the Treasury, *The American Families Plan Tax Compliance Agenda* (May 2021); CBO, *The Effects of Increased Funding for the IRS*, <https://www.cbo.gov/publication/57444> (Sept. 2, 2021).
- 10 *The IRS's Fiscal Year 2022 Budget: Hearing Before the S. Comm. on Finance*, 117th Cong. at 52:26 (June 8, 2021) (statement of Charles P. Rettig, Commissioner, Internal Revenue), <https://www.finance.senate.gov/hearings/the-irss-fiscal-year-2022-budget> (noting the need to replace more than 50,000 IRS employees expected to be lost through attrition within the next six years and to expand and train the IRS workforce).
- 11 For example, it takes almost a year of training before a newly hired IRS revenue agent is qualified to begin basic casework. IRS response to TAS information request (Oct. 15, 2021).
- 12 National Taxpayer Advocate 2020 Annual Report to Congress 12-27 (Most Serious Problem: *IRS Recruitment, Hiring, and Retention: Quality Taxpayer Service and Protection of Taxpayer Rights Are Directly Linked to the IRS's Need to Improve Its Recruitment, Hiring, and Retention Strategies*).
- 13 HCO Email Response Providing Status Update on Corrective Actions Taken (Regarding the 2020 Recruitment, Retention, and Hiring MSP Recommendations) (Sept. 30, 2021) (on file with TAS). See also National Taxpayer Advocate 2020 Annual Report to Congress 12-27 (Most Serious Problem: *IRS Recruitment, Hiring, and Employee Retention: Quality Taxpayer Service and Protection of Taxpayer Rights Are Directly Linked to the IRS's Need to Improve Its Recruitment, Hiring, and Retention Strategies*).
- 14 HCO Email Response Providing Status Update on Corrective Actions Taken (Regarding the 2020 Recruitment, Retention, and Hiring MSP Recommendations) (Sept. 30, 2021) (on file with TAS); IRS responses to TAS information requests (Aug. 13, 2021; Aug. 17, 2021). See also National Taxpayer Advocate 2020 Annual Report to Congress 12-27 (Most Serious Problem: *IRS Recruitment, Hiring, and Employee Retention: Quality Taxpayer Service and Protection of Taxpayer Rights Are Directly Linked to the IRS's Need to Improve Its Recruitment, Hiring, and Retention Strategies*). The current version of the House-approved Build Back Better Act (H.R. 5376)



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- contains helpful hiring authorities that will assist IRS hiring efforts. See Build Back Better Act, H.R. 5376, 117th Cong., § 138401, at 1930 (2021), <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-117HR5376RH-RCP117-18.pdf>.
- 15 HCO Email Response Providing Status Update on Corrective Actions Taken (Regarding the 2020 Recruitment, Retention, and Hiring MSP Recommendations) (Sept. 30, 2021) (on file with TAS); IRS responses to TAS information requests (Aug. 13, 2021; Aug. 17, 2021). See also National Taxpayer Advocate 2020 Annual Report to Congress 12-27 (Most Serious Problem: *IRS Recruitment, Hiring, and Employee Retention: Quality Taxpayer Service and Protection of Taxpayer Rights Are Directly Linked to the IRS's Need to Improve Its Recruitment, Hiring, and Retention Strategies*).
  - 16 The 2022 National Agreement is the collective bargaining agreement between the IRS and National Treasury Employees Union (NTEU). Internal announcements are job announcements only employees within the IRS can apply for if they meet the qualifications whereas external announcements are open to anybody who qualifies. See Article 13, 2022 National Agreement, IRS and NTEU (Oct. 1, 2021), <http://nteuchapter72.org/wp-content/uploads/2021/10/2022-National-Agreement.pdf> (pre-publication proof).
  - 17 National Taxpayer Advocate 2020 Annual Report to Congress 12-27 (Most Serious Problem: *IRS Recruitment, Hiring, and Retention: Quality Taxpayer Service and Protection of Taxpayer Rights Are Directly Linked to the IRS's Need to Improve Its Recruitment, Hiring, and Retention Strategies*).
  - 18 IRS responses to TAS information requests (Aug. 17, 2021; Sept. 8, 2021). In the past, one applicant could apply to multiple open announcements for similar positions, forcing the IRS to review the same applicants and potentially make multiple job offers for the same type of position to the same applicant, thereby increasing the application declination rate.
  - 19 HCO Email Response Providing Status Update on Corrective Actions Taken (Regarding the 2020 Recruitment, Retention, and Hiring MSP Recommendations) (Sept. 30, 2021) (on file with TAS).
  - 20 USAS is the federal government's integrated talent acquisition system used by more than 70 agencies to recruit, evaluate, assess, certify, select, and onboard candidates. OPM, *Services for Agencies, Technology Systems*, <https://www.opm.gov/services-for-agencies/technology-systems/usa-staffing/> (last visited Oct. 19, 2021). USAS provides daily workload management reports and stores data within the system. HCO plans to expand USAS capabilities by allowing for interconnections with other systems to assist with the flow of information between systems and improve reporting capability. IRS response to TAS information request (Aug. 17, 2021).
  - 21 IRS responses to TAS information requests (Aug. 13, 2021; Sept. 8, 2021).
  - 22 HCO has hired 206 hiring specialists and hiring support staff since July 26, 2021, and had 404 specialists on board as of July 26, 2021. IRS response to TAS information request (Aug. 13, 2021).
  - 23 IRS response to TAS information request (Nov. 8, 2021).
  - 24 IRS, W&I, FY 2021 Q4 Business Performance Review (BPR) 8 (2021).
  - 25 IRS responses to TAS information requests (Aug. 13, 2021; Aug. 17, 2021; Sept. 8, 2021; Nov. 8, 2021). Moreover, on Sept. 9, 2021, President Biden mandated COVID-19 vaccinations as a condition of employment for all federal employees. The White House, *Executive Order 14043* (Sept. 9, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/09/executive-order-on-requiring-coronavirus-disease-2019-vaccination-for-federal-employees/>. See also OPM, *Guidance on Enforcing Coronavirus Disease 2019 Vaccination Requirement for Federal Employees – Executive Order 14043* (Oct. 1, 2021), [https://chcoc.gov/sites/default/files/Director-Memo-on-Enforcement-of-Vaccine-Requirements\\_0.pdf](https://chcoc.gov/sites/default/files/Director-Memo-on-Enforcement-of-Vaccine-Requirements_0.pdf). Although a White House press release from November 2021 shows almost 92 percent of Treasury employees are vaccinated and over 98 percent have complied with the mandate (through vaccination or seeking an exemption), this figure does not take into account the number of employees who retired early or left the public sector. See White House, Briefing Room, *Update on Implementation of COVID-19 Vaccination Requirement for Federal Employees* (Nov. 24, 2021), <https://www.whitehouse.gov/omb/briefing-room/2021/11/24/update-on-implementation-of-covid-19-vaccination-requirement-for-federal-employees/>.
  - 26 The data in this figure is derived from the HCO Human Capital Data Management & Technology Database and includes all employees, including permanent, temporary, and seasonal. IRS responses to TAS information requests (Aug. 13, 2021; Oct. 29, 2021; Nov. 8, 2021; Dec. 15, 2021). For hires external to the IRS for FY 2021, the IRS FY 2021 Financial Report states that “as of September 30, 2021, the IRS hired more employees than in any of the previous five years, with over 10,700 new external hires.” This figure differs from the figure provided by HCO because it includes transactions of all employee types for the entire Fiscal Year 2021. IRS, *Fiscal Year 2021 Financial Report 14* (Nov. 2021), <https://www.irs.gov/pub/irs-pdf/p5456.pdf>. The data still shows the difficulty the IRS faces with keeping up with the pace of attrition despite its best efforts.
  - 27 IRS, *IRS Workforce Retirement Insight* (last visited Oct. 27, 2021) (Internal IRS Database).
  - 28 *Id.*
  - 29 Erich Wagner, *OPM Announces Adjustments to Annual Time-to-Hire Metrics*, GovExec (Feb. 26, 2020) <https://www.govexec.com/management/2020/02/opm-announces-adjustments-annual-time-hire-metrics/163361/>. See also OPM, *Memorandum: Time-to-Hire Reporting Requirements* (Feb. 25, 2020), <https://www.chcoc.gov/content/time-hire-reporting-requirements-1>; Chief Human Capital Officers Counsel, *Updated Instructions for Reporting Annual Time-to-Hire (T2H)* 3 (Dec. 2019), <https://chcoc.gov/sites/default/files/Time-to-Hire%20Instructions.pdf>.
  - 30 According to a 2015 study by Glassdoor Economic Research, the public sector had among the longest interview processes, with an average of 53.8 days whereas sectors with the shortest interview processes were restaurants and bars with an average of 10.2 days, private security with an average of 11.6 days, and supermarket retail positions with an average of 12.3 days. See Andrew Chamberlain, *How Long Does It Take to Hire? Interview Duration in 25 Countries*, GLASSDOOR, <https://www.glassdoor.com/research/time-to-hire-in-25-countries/> (last visited Nov. 21, 2021). This study was done in 2015, and the labor market has since changed, including due to the recent pandemic. Nevertheless, it shows that public sector hiring has historically taken longer than private sector hiring.
  - 31 HCO, *5 Phase Strategic Hiring Model* (Oct. 2021).
  - 32 IRS responses to TAS information requests (Aug. 13, 2021; Nov. 8, 2021). For FY 2020, data is from October 1, 2019, to September 30, 2020. For FY 2021, data is from October 1, 2020, to September 30, 2021.
  - 33 Andrew Eversden, *Commission Calls USAJOBS Listings 'Unintelligible' in Drive to Reform Hiring Process*, FEDERAL TIMES (Mar. 25, 2020), <https://www.federaltimes.com/management/career/2020/03/25/commission-calls-usajobs-listings-unintelligible-in-drive-to-reform-hiring-process/>.
  - 34 National Commission on Military, National, and Public Service, *Inspired to Serve: Final Report of the National Commission on Military, National, and Public Service* (Mar. 2020), <https://hasbrouck.org/draft/FOIA/Final-Report.pdf>. The National Commission on Military, National, and Public Service is a U.S. temporary federal agency established by the National Defense Authorization Act for FY 2017. See Pub. L. No. 114–328 (Dec. 23, 2016), <https://www.govinfo.gov/content/pkg/PLAW-114publ328/pdf/PLAW-114publ328.pdf#page=132>.



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- See also Andrew Eversden, *Commission Calls USAJOBS Listings 'Unintelligible' in Drive to Reform Hiring Process*, *FEDERAL TIMES* (Mar. 25, 2020), <https://www.federaltimes.com/management/career/2020/03/25/commission-calls-usajobs-listings-unintelligible-in-drive-to-reform-hiring-process/>.
- 35 As applicants gain additional experience, they can qualify for higher graded positions.
  - 36 OPM, *Interim Rule: Hiring Authority for College Graduates*, *FEDERAL REGISTER* (Nov. 5, 2021), <https://public-inspection.federalregister.gov/2021-23871.pdf>. This new authority has a cap based on a percentage of the number of interns hired the previous year. HCO will work to use this authority when available. IRS response to TAS information request (Nov. 8, 2021).
  - 37 See 5 C.F.R. § 337.202 for the definition of direct-hire authority. As one federal agency website explains, direct-hire authority “expedites hiring by eliminating rating and ranking, veterans’ preference, as well as typical selection procedures. All applicants who meet the minimum qualification requirements will be referred to the hiring manager for consideration and may be selected.” Department of the Interior, *Direct Hire Authority Quick Reference Guide*, <https://www.doi.gov/sites/doi.gov/files/direct-hire-authority-quick-reference-guide.pdf> (updated May 4, 2021).
  - 38 IRS responses to TAS information requests (Aug. 13, 2021; Aug. 17, 2021).
  - 39 *Id.*
  - 40 *Id.*
  - 41 IRS response to TAS information request (Dec. 15, 2021).
  - 42 Critical pay authority is an authority provided under 5 U.S.C. 5377 and 5 C.F.R. § 535. Section 2103 of the Taxpayer First Act, titled *Streamlined Critical Pay Authority for Information Technology Positions*, reinstated streamlined critical pay authority for positions in IRS IT operations (which had lapsed in 2013) until Sept. 30, 2025. This section also allows the IRS to pay recruitment, retention, relocation incentives, and performance bonuses to streamlined critical pay appointees in positions in IT operations. See IRC § 7812.
  - 43 Currently, the IRS has one Senior Executive Service (SES) position designated under critical pay authority. The IRS has requested critical pay authority designations for an additional six positions. IRS response to TAS information request (Aug. 17, 2021).
  - 44 See *The IRS’s Fiscal Year 2022 Budget: Hearing Before the S. Comm. on Finance*, 117th Cong. at 2:19:04 (2021) (statement of Charles P. Rettig, Commissioner, Internal Revenue), <https://www.finance.senate.gov/hearings/the-irss-fiscal-year-2022-budget>. The current version of the House-approved Build Back Better Act (H.R. 5376) does contain helpful hiring authorities that will assist IRS hiring efforts. See Build Back Better Act, H.R. 5376, 117th Cong., § 138401(b), at 1930 (Nov. 3, 2021), <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-117HR5376RH-RCP117-18.pdf>.
  - 45 OPM, Special Rates, <https://apps.opm.gov/SpecialRates/srsrequest.aspx> (last visited Nov. 15, 2021). Under (5 U.S.C. § 9509), the Secretary of the Treasury is authorized to establish broad banding pay and classification systems covering all or any portion of the IRS workforce under the GS pay system. The IRS already has in place several different pay flexibilities, including the IRS Payband System for all management positions and Special Rate Schedules for Information Technology Management and General Engineer positions. TAS’s recommendation is in addition to current available hiring authorities.
  - 46 The IRS accomplishes this by “dual encumbering,” meaning an individual is appointed to a position already occupied by an incumbent.
  - 47 See 12 U.S.C. § 1833b. See Charles Rossotti and Ronald Sanders, *Shrinking the Tax Gap Requires a Renewed IRS Workforce*, *GovEXEC* (Aug. 3, 2021), <https://www.govexec.com/workforce/2021/08/shrinking-tax-gap-requires-renewed-irs-workforce/184239/>, for more information about this proposal.
  - 48 IRS responses to TAS information requests (Aug. 13, 2021; Aug. 17, 2021).
  - 49 IRS response to TAS information request (Sept. 8, 2021).
  - 50 *Id.*
  - 51 IRS response to TAS information request (Nov. 5, 2021).
  - 52 Of course, this is a separate matter concerning the need for HCO to improve training efforts for new hires and current employees. Once an employee is hired, the employee still needs to go through a training process to be able to competently perform his or her assigned duties.
  - 53 After talks with the NTEU, the IRS is currently working on creating a Referral Bonus Program to enhance recruitment efforts for hard-to-fill positions by encouraging existing employees to leverage their networks to identify high quality job candidates.
  - 54 IRS, Taxpayer First Act Report to Congress (Jan. 2021), <https://www.irs.gov/pub/irs-pdf/p5426.pdf>. The Taxpayer First Act, Pub. L. No. 116-25, § 2402, 133 Stat. 1014 (2019) required that the Commissioner of Internal Revenue submit to Congress a written report providing a comprehensive training strategy for employees of the IRS.
  - 55 Meeting Between National Public Liaison Participants and TAS on the topics of IRS Training, IRS Hiring and Recruitment, and IRS Transparency (Nov. 9, 2021).
  - 56 See OPM Training and Development Policy Wiki, <https://www.opm.gov/WIKI/training/Index.aspx> (last visited Nov. 24, 2021).
  - 57 The IRS delivered 4,352,393; 4,184,414; 4,622,817; 4,025,362; 3,632,008; and 4,311,927 hours of training in FYs 2015-2020, respectively. Included in this training were 370,351; 395,307; 394,131; 404,950; 270,730; and 330,964 hours of mandatory briefings for FYs 2015-2020, respectively. IRS response to TAS information request (Oct. 20, 2021). Mandatory briefings, required of all employees, cover topics such as information systems and physical facilities security, unauthorized access awareness, the Federal Employee Antidiscrimination and Retaliation Act of 2002, and rules relating to records management, privacy, and information protection and disclosure. In addition, some operating divisions conducted some training that was not recorded in HCO’s Servicewide Training Events Tracking System, such as information sharing sessions, informal workshops during group meetings, lunch and learn sessions, information workshops, or refresher training based on the manager’s assessment of particularized needs of a group of his or her employees. IRS responses to TAS information requests (Oct. 15, 2021; Oct. 17, 2021; Oct. 20, 2021; Oct. 26, 2021).
  - 58 The cost of the training was \$36,514,760; \$34,059,475; \$37,459,978; \$36,384,795; \$48,197,023; and \$30,974,779 for FYs 2015-2020, respectively. IRS responses to TAS information requests (Oct. 15, 2021; Oct. 17, 2021; Oct. 18, 2021; Oct. 20, 2021; Oct. 26, 2021).
  - 59 IRS responses to TAS information requests (Oct. 15, 2021; Oct. 17, 2021; Oct. 18, 2021; Oct. 20, 2021; Oct. 26, 2021).
  - 60 This data includes both classroom and on-the-job (OJT) training. IRS responses to TAS information requests (Oct. 15, 2021; Oct. 17, 2021; Oct. 18, 2021; Oct. 20, 2021).
  - 61 For many positions, a substantial amount of training (or even most of the training) is OJT. IRM 6.410.1.2.1, Definitions (Oct. 30, 2016) describes OJT as “a structured program designed to provide practice of job duties under the supervision of an on-the-job instructor, usually following formal classroom training in a specific discipline.” As Commissioner Rettig noted, part of the IRS’s hiring strategy is to hire not only inexperienced employees but also mid-level and senior-level professionals from the private sector who can lead

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- teams. *The IRS's Fiscal Year 2022 Budget: Hearing Before the S. Comm. on Finance*, 117th Cong. at 2:19:04 (2021) (statement of Charles P. Rettig, Commissioner, Internal Revenue), <https://www.finance.senate.gov/hearings/the-irss-fiscal-year-2022-budget>.
- 62 Government Accountability Office (GAO), GAO 19-176, *Strategic Human Capital Management is Needed to Address Serious Risks to IRS's Mission* 25 (2019).
- 63 CBO, *The Effects of Increased Funding for the IRS*, <https://www.cbo.gov/publication/57444> (Sept. 2, 2021).
- 64 IRS, *Strategic Plan Fiscal Year (FY) 2018-2022*, at 7, <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.
- 65 See U.S. Department of the Treasury, *The American Families Plan Tax Compliance Agenda* (May 2021).
- 66 See National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration 3 (Revamp the IRS Budget Structure and Provide Sufficient Funding to Improve the Taxpayer Experience and Modernize the IRS's Information Technology Systems)*.
- 67 See U.S. Department of the Treasury, *The American Families Plan Tax Compliance Agenda* (May 2021).
- 68 See National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration 3 (Revamp the IRS Budget Structure and Provide Sufficient Funding to Improve the Taxpayer Experience and Modernize the IRS's Information Technology Systems)*.

## TELEPHONE AND IN-PERSON SERVICE: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications

### WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Taxpayers require basic support and guidance from the IRS to fulfill their filing obligations and pay amounts legally due. Phone service is an essential component of support and guidance, providing assistance to tens of millions of taxpayers every year. In most years, taxpayers have difficulty reaching IRS customer service representatives (CSRs) to obtain tax assistance and account information, but this past year was worse than usual, as call volume nearly tripled and only 11 percent of calls reached a CSR. Taxpayers and practitioners must have reliable access to telephone assistance to obtain quick, easy, and accurate answers to their inquiries. In addition, the pandemic curtailed in-person access to IRS Taxpayer Assistance Centers (TACs), making it even harder to get assistance. Without support, taxpayers are disadvantaged and frustrated, and tax compliance is jeopardized.

### EXPLANATION OF THE PROBLEM

The COVID-19 pandemic caused call volume to skyrocket, reaching historic levels of calls, making it even harder for taxpayers to receive assistance. During fiscal year (FY) 2021, the IRS received a record 282 million calls. Of those calls, 32 million, or 11 percent, were answered by CSRs.<sup>1</sup> Taxpayers faced additional difficulties as the pandemic further curtailed in-person access to TACs, which has been dwindling for years.<sup>2</sup> Although in-person operations have resumed, the IRS still faces the challenge of operating TACs in a safe, efficient, and flexible manner.<sup>3</sup>

In 2021, many factors contributed to the IRS receiving a record number of telephone calls and answering the lowest percentage of calls in its history. Taxpayers were looking for answers as the IRS took much longer to process returns this year, delaying refunds for millions of taxpayers, causing financial hardships for some, and resulting in tens of millions of individuals being unsuccessful in speaking with a CSR.<sup>4</sup> The Level of Service (LOS) for the Accounts Management (AM) phone lines fell as low as four percent in March when Congress enacted sweeping legislation favorably impacting taxpayers' 2020 taxes.<sup>5</sup> Calls were not answered, leaving taxpayers wondering how the new legislation impacted their tax returns. In 2021, taxpayers experienced significant challenges while LOS fell to an all-time low.

### ANALYSIS

#### Effective Customer Support Requires Quality Phone Service

##### *IRS Phone Service Was Inadequate Prior to the Pandemic and Spiraled From There*

Although the IRS energetically encourages taxpayers to seek assistance online, CSRs are an important and necessary part of its service delivery model. CSRs are the frontline employees who answer calls on the main IRS phone lines. They provide general tax information, furnish updates on the status of taxpayer returns/refunds/accounts, and adjust taxpayer accounts, when appropriate. Often CSRs are the IRS's first, and sometimes only, contact with a taxpayer. As such, CSRs are trained to communicate with taxpayers and to be knowledgeable about tax law and IRS operational procedures.

CSRs must be able to help taxpayers, practitioners, and other third parties in a manner that warrants the highest degree of public confidence. Their specific duties vary depending upon the phone line(s) to which they are assigned. For example, CSRs working the “1040” line may answer basic questions regarding filing requirements and deadlines, while those assigned to the consolidated Automated Collection System (ACS) lines generally help taxpayers understand and respond to balance due notices.<sup>6</sup> CSRs are an indispensable resource when taxpayers simply cannot find the answers they seek or when taxpayers lack access to or comfort with technology.

However, in addition to the phone service they provide, CSRs also fulfill other responsibilities as time allows. These include responding to correspondence, processing amended returns, and working paper cases.<sup>7</sup> As taxpayer call volume increases, CSRs have less availability for these other tasks. In turn, this diminishes the IRS’s ability to be responsive to taxpayer needs in those areas, which causes processing delays. Millions of taxpayers are still waiting for the IRS to process their amended returns, and many will not be processed during 2021 due to the high volume of calls and unavailability of CSRs. This creates a vicious cycle: CSRs are so busy answering the phones that they are unable to deal with the incoming paper inventory, and the result causes even more phone calls as the paperwork stacks up.

### Level of Service on IRS Phone Lines

The IRS monitors the effectiveness of its phone lines by using LOS.<sup>8</sup> At various points, the National Taxpayer Advocate and the Treasury Inspector General for Tax Administration (TIGTA), among others, have pointed out the shortcomings of LOS when it comes to evaluating the quality of IRS phone lines.<sup>9</sup> Despite the shortcomings of the LOS measure, this Most Serious Problem will utilize it, as LOS is currently the measure employed by the IRS. As a threshold matter, the IRS must reach adequate phone service as evaluated by LOS before it will be able to achieve the type of robust service urged by the National Taxpayer Advocate, which entails responsive and informative phone assistance. As the frontline of the IRS, CSRs are key to establishing trust and accuracy in tax administration.

Figure 2.3.1 shows IRS phone data for FYs 2018-2021.

**FIGURE 2.3.1, Call Attempts (in Millions), Calls Answered (in Millions), and LOS for IRS Phones, FYs 2018-2021<sup>10</sup>**

Line and Measure	FY 2018	FY 2019	FY 2020	FY 2021
Enterprise Total Call Attempts	98.5	99.4	100.5	281.7
Enterprise Total Assistor Calls Answered	34.7	28.6	24.2	32
Enterprise Total Assistor Calls Answered by Percentage	35%	29%	24%	11%
Enterprise Total LOS	69%	56%	51%	21%
AM Call Attempts	77.7	76.8	82.6	239
AM Assistor Calls Answered	25.3	21.3	17.9	21.7
AM Assistor Calls Answered by Percentage	33%	28%	22%	9%
AM LOS	76%	65%	53%	19%
Consolidated ACS Call Attempts	12.1	15	12	16.1
Consolidated ACS Assistor Calls Answered	5.9	4.7	4.2	5.7
Consolidated ACS Assistor Calls Answered by Percentage	49%	31%	35%	35%
Consolidated ACS LOS	53%	34%	40%	38%

### Most Serious Problem #3: Telephone and In-Person Service

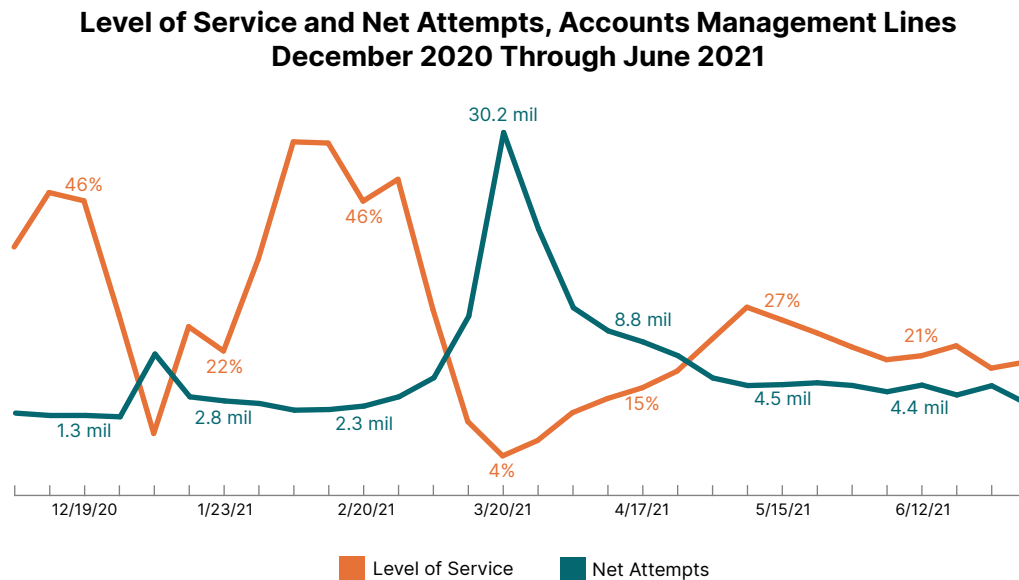
Line and Measure	FY 2018	FY 2019	FY 2020	FY 2021
Practitioner Priority Service (PPS) Call Attempts	3.1	3.5	4.8	9.3
PPS Assistor Calls Answered	2.2	2.1	1.9	2.2
PPS Assistor Calls Answered by Percentage	72%	61%	39%	24%
PPS LOS	85%	78%	56%	28%

As Figure 2.3.1 demonstrates, even when measured by the LOS standard, taxpayers were not adequately served well over 40 percent of the time in FY 2019, the last year unaffected by the pandemic. The historical inadequacy of phone service is attributable to at least two principal causes. First, there are simply not enough CSRs to assist taxpayers in a timely and thorough fashion.<sup>11</sup> Second, CSRs lack a centralized Enterprise Case Management (ECM) system that would give them access to the taxpayer information they need to efficiently answer questions and resolve problems. Currently, the IRS stores taxpayer data across a range of databases and systems. This poses problems for taxpayers because not all IRS employees have access to the same systems and because these systems do not always communicate with each other. A modern ECM system would replace this fractured landscape with a unified cloud-based case management system to better assist taxpayers.<sup>12</sup> Additional personnel and better tools would make it easier for CSRs to assist taxpayers with just one phone call, thus improving first contact resolution, which in turn increases customer satisfaction.<sup>13</sup>

In March 2020, the pandemic hit and created a perfect storm of taxpayer service challenges. The IRS was forced to close many of its offices, including offices traditionally housing CSRs. Because the IRS had been functioning under subsistence-level budgets for years, however, it had not outfitted many of its employees with laptop computers or otherwise established the infrastructure that would enable CSRs to telework and continue providing telephone assistance. Instead, the IRS telephone lines either were vastly understaffed or in some cases shut down completely.

The IRS began to bring telephone service back online by issuing CSRs laptops and by successfully navigating various telework-related issues.<sup>14</sup> At roughly the same time, COVID-19 relief legislation and a range of taxpayer questions unique to the pandemic caused calls to the assistor lines to skyrocket. Calls exploded by over 300 percent from the 2019 to the 2021 filing season, with call volume rising from approximately 41 million during the 2019 filing season to 167 million in the 2021 filing season.<sup>15</sup> Despite the laudable efforts of the IRS in general and CSRs in particular, the overall LOS for the full FY 2021 plummeted to 21 percent (and the percentage of calls answered by CSRs dropped to 11 percent).<sup>16</sup>

Figure 2.3.2 shows the relationship between call volume and LOS, where spikes in call volume correspond to drops in LOS. These spikes generally coincide with certain relief legislation passed by Congress. Specifically, Congress enacted the American Rescue Plan Act (ARPA) in March 2021, issuing a third round of stimulus payments and extending a tax-free waiver on the first \$10,200 of unemployment earnings.<sup>17</sup> TAS has previously written about the negative impact of late-year tax law changes on taxpayers, and 2021 demonstrated that changes in the middle of the filing season can have an even stronger impact.<sup>18</sup>

FIGURE 2.3.2<sup>19</sup>

The real-world impact to taxpayers and practitioners of this precipitous drop in LOS has been devastating and ongoing. A *few* examples of hardships encountered by taxpayers include:<sup>20</sup>

- A taxpayer contacted by the IRS regarding her deceased mother's return was told to call in but has been trying unsuccessfully for over a year to get through to the IRS.<sup>21</sup>
- A representative seeking to obtain the Advanced Employer Retention Credit on behalf of a taxpayer in extreme financial hardship received a letter asking that additional information be provided over the phone to a specific IRS agent. However, that phone line only plays a recorded message, and there is no way to speak to the agent.<sup>22</sup>
- Intent to levy notices instruct taxpayers to call in to find out how much they owe, but when they do, no one answers.<sup>23</sup>

Successfully getting through to the IRS by phone has become so difficult that it has driven some taxpayers and practitioners to hire companies that use automated technology to continually dial IRS phone lines until they finally get through on behalf of their customers.<sup>24</sup> A troubling aspect of this new cottage industry is that it has the effect of further straining IRS phone lines and making it even more difficult for the average taxpayer to reach the IRS. It also provides those who can pay for their service an unfair advantage. Being able to call the IRS is a free public service that should be available on an equal basis. Paying to receive preferential access to the IRS should not be permitted.<sup>25</sup>

The pandemic created unforeseen challenges and negative consequences for taxpayers, practitioners, and IRS employees with no end in sight. Even if return to a pre-pandemic customer service model were possible, the IRS would simply revert to a system already in dire need of improvement. Taxpayers deserve better, and although the IRS aspires to provide better, until additional information technology (IT) resources are applied and an adequate number of CSRs are hired and trained, this will not change. The National Taxpayer Advocate anticipates that taxpayers will experience similarly low LOS in the upcoming filing season and is concerned about the impact to taxpayers and practitioners. More responsive phone service would



allow taxpayers to comply with their tax obligations and effectively resolve tax issues while enabling the IRS to collect tax revenue more efficiently. As discussed *infra*, the IRS is making plans to bring about this improvement, but these upgrades will largely rely on the financial support of Congress and the ability to hire and train new employees. Unfortunately, these essential CSR positions are not generating sufficient numbers of applications even to start new employees before the 2022 filing season, much less having those new hires trained and ready to answer calls.<sup>26</sup>

### ***The IRS Can Learn Much From the Strategies of Industry and Other Government Agencies***

While the IRS struggled to adjust to the reality of the pandemic, other organizations were able to support employee telework, such that the organizations encountered relatively minor service disruptions. The IRS has made significant strides in facilitating workplace flexibility for its employees, but it can still benefit from the practices and experiences of other organizations. A forward-looking customer service model includes elements that have either been accelerated or created on account of the pandemic. These elements include telephone callback capability, increased emphasis on text chat assistance, enhanced videoconferencing technology, flexible telework policies, and proactive means of gathering feedback from customers and stakeholders.<sup>27</sup> Many of these innovations have been incorporated into the IRS's congressionally mandated plan for modernizing taxpayer service.<sup>28</sup>

**A forward-looking customer service model includes... telephone callback capability, increased emphasis on text chat assistance, enhanced videoconferencing technology, flexible telework policies, and proactive means of gathering feedback from customers and stakeholders.**

Although the IRS is sometimes subject to different requirements and limitations than other organizations, the implementation of its plan can still benefit from a comparative analysis.<sup>29</sup> For example, when the pandemic hit, the Veterans Health Administration (VA) quickly increased telehealth services, and by late August 2020, telehealth visits had increased by over 1,000 percent.<sup>30</sup> This expansion of telehealth services was given further reach because the VA had previously pushed for a law, codified in 2018, to enable VA clinicians to provide service across state lines, a flexibility that proved crucial during the pandemic.<sup>31</sup> The VA was also able to gather feedback on veterans' needs rapidly at the onset of the pandemic due to its existing customer feedback system, which pulled information from sources such as surveys and social media posts.<sup>32</sup>

Government agencies that performed well when confronted with the pandemic had either already engaged in forward-looking planning or had situated themselves to be nimble in the face of unexpected challenges. For instance, U.S. Citizenship and Immigration Services had made its CSRs remote-ready years before the pandemic, and therefore, it was prepared when the government issued stay-at-home orders. Likewise, the Centers for Medicare and Medicaid quickly reprioritized resources to transition approximately 2,000 CSRs to full-time telework within only a few weeks.<sup>33</sup> Of course, a prerequisite for this agility is sufficient funding to anticipate and respond to the exigencies of the moment.

One cost-effective approach that has been widely adopted is the use of chatbots to disseminate basic information. Entities ranging from county governments to state unemployment agencies to national ministries of health are deploying artificial intelligence (AI) to answer the most frequently arising questions without the need to tie up scarce personnel.<sup>34</sup> Some of the questions AI is addressing include how to file for unemployment benefits and how to get tested for COVID-19.<sup>35</sup>

Private industry has also been forced to react to shifting limitations and expectations during the pandemic. Wait times to reach call centers increased on account of limited workforce availability resulting from personnel health issues and social distancing requirements.<sup>36</sup> At the same time, customer call volume spiked due to a variety of factors.<sup>37</sup> Among other things, customers needed to expand their internet capacity, address financial challenges, and resolve travel complexities. To help deal with the increased demand for communications, companies made increased use of their existing strategies, such as wait-time estimates and callback options, while also expanding digital communications. One survey found that the pandemic accelerated companies' digital strategies by approximately six years, a move that customers appear to appreciate, as a different survey found that nearly 70 percent of customers switched to more widely available text chat over other methods of assistance during the pandemic.<sup>38</sup>

The pandemic forced other considerations beyond the challenge of fielding high call volumes with reduced staff. Companies with a strong brick-and-mortar presence, such as Apple and the Northwest Community Credit Union, determined that with in-person service restricted and underperforming locations closing, the best approach was to move some employees from providing in-person support to a virtual role.<sup>39</sup> By changing employees' duties instead of laying them off, these companies ensured that virtual support has become more robust to make up for limited in-person service.

Many of these solutions, which were developed in response to a short-term crisis, will become part of the long-term service delivery model for industry and government. Of necessity, the pandemic has functioned as an innovation laboratory, the best practices from which can serve to guide the IRS as it moves forward.

### ***The IRS Is Attempting to Make Progress in Accordance With the Taxpayer First Act***

To its credit, the IRS is attempting to forge ahead with a variety of upgrades and innovations in areas impacting its traditional telephone service to provide better customer support for taxpayers. This expansion represents a combination of the IRS's own initiatives and goals arising out of the Taxpayer First Act (TFA), passed by Congress in July 2019.<sup>40</sup>

Among other things, TFA required the Department of the Treasury, acting through the IRS, to develop comprehensive multiyear plans for improving taxpayer services and modernizing its IT systems.<sup>41</sup> The IRS's Taxpayer First Act Report to Congress (TFA Report), which was presented to Congress in January 2021, sets forth the IRS's aspirations for creating an omnichannel strategy that seamlessly supports taxpayers as they attempt to solve problems and comply with their federal tax obligations.<sup>42</sup> This omnichannel approach, if successfully implemented, would mirror many of the best practices adopted in private industry and, to a lesser degree, by some government agencies.

Figure 2.3.3 shows the technologies the report identified as the foundation of this seamless experience.

FIGURE 2.3.3<sup>43</sup>

### Technologies Serving as the Foundation for a Seamless Taxpayer Experience



#### AUTOMATED CALLBACK

Rather than waiting on hold, this will allow taxpayers to provide their telephone numbers and opt for an IRS employee to call them back.



#### WAIT TIME TRANSPARENCY

Providing taxpayers with estimated wait times will enable them to decide whether to remain on hold, opt for a call back, or seek information on IRS.gov.



#### CONCIERGE NAVIGATION SUPPORT

This capability will allow IRS employees to assist taxpayers directly or route calls to a subject matter expert and will streamline the handling of taxpayer questions that arise either via web chat or via phone.



#### 360-DEGREE VIEW OF TAXPAYER ACCOUNTS

An improved Enterprise Case Management system will give IRS employees a global view of each taxpayer account, including real-time taxpayer records, interaction history, and appointment schedules.



#### ARTIFICIAL INTELLIGENCE-POWERED INFORMATIONAL WEB CHAT

An AI-powered chatbot will be able to answer taxpayer questions or direct taxpayers to relevant information on IRS.gov or their online accounts, and if necessary, will connect taxpayers to IRS employees for web chat or phone calls. Because of the nature of AI technology, the chatbot will improve over time as the knowledge base expands and more taxpayer experience feedback becomes available.



#### ARTIFICIAL INTELLIGENCE-POWERED DIGITAL APPOINTMENTS

If the chatbot is unable to resolve a taxpayer's issue, taxpayers will have the ability to schedule phone, video, or in-person appointments with IRS employees, including those in examination or collection.



#### ARTIFICIAL INTELLIGENCE-POWERED EMPLOYEE ASSISTANT

An IRS-facing system will support IRS employees when answering taxpayers' questions with an AI-powered knowledge base that will make suggestions based on a taxpayer's experience, questions, or pages visited on IRS.gov.

These tools would significantly increase the quality of taxpayer service while enhancing IRS efficiency and optimizing resource allocation, but taxpayers are still waiting to see the benefits. These additions are projected to be rolled out over the short-term (FYs 2021-2022), medium-term (FYs 2023-2025), and long-term (FYs 2026-2030). The extended timetable for implementing many of these upgrades is concerning, but the scope of the necessary improvements is sufficiently broad that the appropriate metric should be incremental progress rather than overnight success. Likewise, the timing of such improvements, as well as their very existence, will largely be dependent on the degree of funding provided by Congress to support the service enhancements identified in the congressionally mandated TFA Report. If funding is approved, the National Taxpayer Advocate recommends that these changes be prioritized and quickly implemented.

***To Significantly Improve Customer Service, the IRS Needs Sufficient Funding From Congress***

Until this year, Congress has allocated only status quo funding for taxpayer services. Funding held steady at \$2.54 billion for FYs 2019 and 2020 and then slightly rose to \$2.55 billion for FY 2021.<sup>44</sup> Taking inflation into account, this represents a funding decrease between FYs 2019-2021. The net result has been a drop in taxpayer service employees, measured in terms of full-time equivalents from 28,531 in FY 2019 to 25,678 in FY 2021.<sup>45</sup>

For FY 2022, the IRS requested a 13.65 percent increase in the taxpayer services budget, which would lead to an allocation of \$2.94 billion.<sup>46</sup> At this writing, Congress has not yet enacted a full-year FY 2022 budget. While a 13.65 percent increase would be an improvement over prior years, the IRS will need considerable additional funding to hire the appropriate number of taxpayer services personnel. CSRs constitute a subgroup of taxpayer service employees, and the overall budget for taxpayer services has a direct impact on the amount that the IRS can allocate to CSRs. For example, there were 12,383 CSRs in FY 2019; 12,073 CSRs in FY 2020; and 16,036 CSRs in FY 2021.<sup>47</sup> The IRS has adopted aggressive CSR hiring goals, which would bring CSR numbers up by 40 percent for calendar year (CY) 2021 compared to CY 2020.<sup>48</sup> Unfortunately, as of this writing, the IRS has not received the number of applicants it needs for the upcoming filing season. If the IRS is able to subsequently hire the necessary CSRs, they will lack the required 12 weeks of training needed to be able to answer taxpayer calls during the peak filing season period. Taxpayer service, and more importantly taxpayers' ability to obtain needed assistance, will be directly impacted.

To answer more taxpayer telephone calls, the IRS must be able to increase the number of CSRs. This is just one piece of a larger customer service puzzle. To serve taxpayers well, the IRS must also develop more robust online accounts,<sup>49</sup> create a system for digital communication with the IRS,<sup>50</sup> eliminate e-filing barriers to reduce the necessity of paper returns,<sup>51</sup> and timely update its website to provide information about challenges facing taxpayers and anticipated timeframes for solutions.<sup>52</sup>

TAS believes the IRS should be staffed to answer at least 85 percent of taxpayer calls.<sup>53</sup> Even if IRS taxpayer services received the requested 13.65 percent funding increase and expanded CSR staffing proportionally, this would only represent a welcome addition; it would not, however, allow for the onboarding of sufficient numbers of CSRs to provide an 85 percent LOS.<sup>54</sup> Sadly, this seems unattainable based upon the current hiring percentages.

Together with improvements to other modes of communication, an adequate number of CSRs is an indispensable element of an upgraded telephone service delivery model. In addition, technology enhancements, such as callback functionality and concierge support, can streamline the use of resources and generally improve the overall taxpayer experience. More CSRs and better technology will allow for the improvements that the IRS is attempting to make and that taxpayers have a right to expect. Congress must do its part, however, and increase funding for taxpayer services so that the IRS can allocate the resources needed to reach the National Taxpayer Advocate's goal of 85 percent LOS.<sup>55</sup>

## Taxpayer Assistance Centers Should Address Gaps in Taxpayer Needs That Cannot Be Met by Phone

If taxpayers reach a CSR on the phone, they are often able to obtain answers to their questions and resolve issues without ever leaving their homes. However, some tasks, such as verifying identity or making a deposit to pay an outstanding balance, require taxpayers to make an appointment to visit a TAC.<sup>56</sup> These offices, located in communities throughout the country, also provide a variety of services, such as answering account inquiries, furnishing tax law assistance, and providing access to computer kiosks.<sup>57</sup> As with phone assistors, when TAC employees are not busy helping taxpayers, they also have account processing duties, such as working the Correspondence Imaging System inventory.<sup>58</sup>

In recent years, dwindling budgets have caused many TACs to go unstaffed or understaffed, and the number of TAC locations has decreased over the past decade from 401 in 2011 to 358 in 2021.<sup>59</sup> During the pandemic, 49 TACs were temporarily unstaffed for extended periods.<sup>60</sup> This further delayed taxpayer access to the face-to-face services only offered at TACs.

Even TACs that were able to remain open some or all of the time had to cope with the requirements of social distancing for the protection of both taxpayers and TAC personnel. Nevertheless, the IRS has indicated that it is committed to fully restoring TAC services: effective May 24, 2021, the IRS required all TAC employees previously teleworking to report back to their offices to provide face-to-face support.<sup>61</sup> All TACs have now been reopened, and the IRS is again providing public-facing services at 358 TACs. In September 2021, the IRS announced its plans to fill positions at these TACs.<sup>62</sup> With improved staffing levels, the IRS hopes to combat attrition, fulfill service needs that are currently unmet, ensure that all TAC locations have at least one and ideally more than one employee, and reduce taxpayer wait time to no more than 30 days.<sup>63</sup> To this point, however, the IRS has only been able to hire and onboard a handful of new TAC employees.<sup>64</sup> As with the IRS's current hiring initiative for phone assistors, the National Taxpayer Advocate is concerned with the lack of applicants needed to fully support the TACs.

The difficulty accessing TACs, which has increased over time and which the pandemic has exacerbated, points to the need to expand videoconferencing capabilities to help fill current or future voids in face-to-face service at TACs.<sup>65</sup> Beyond the current exigencies of the pandemic, videoconferences may be preferable for taxpayers who are geographically remote from a TAC, taxpayers with mobility or transportation challenges, and taxpayers who simply prefer the convenience of a virtual meeting. Past strategies for videoconferencing have relied on virtual service delivery (VSD), a taxpayer-facing technology available at limited TACs or partner sites. This has been beneficial, and TAS supports IRS efforts to expand and modernize VSD capabilities to make secure videoconferencing available at neighborhood facilities such as local post offices, community centers, and Volunteer Income Tax Assistance sites.

However, because VSD requires taxpayers to travel to a location other than their homes, it is inherently limited in its ability to bridge the gap in face-to-face TAC service.<sup>66</sup> This shortcoming, which has always existed, was aggravated during the pandemic. As a result, the IRS should comprehensively adopt videoconferencing platforms, such as Teams, WebSD, or Zoom, that allow taxpayers to use their own devices in their own homes.<sup>67</sup> This would greatly expand taxpayers' ability to hold videoconferences with TAC employees and get the help they need. In the past, the IRS has suffered bandwidth limitations that have curtailed the widespread use of videoconferencing to communicate with taxpayers.<sup>68</sup> However, the IRS has increased its bandwidth due to the pandemic. While further upgrades may be needed, the benefits of readily accessible videoconferencing between taxpayers and the IRS, including TACs, via taxpayers' personal computers and mobile devices far outweigh the short-term costs of this technology. The availability of this technology will allow the IRS to better utilize its own resources by shifting to virtual meetings where taxpayers are agreeable and will allow taxpayers multiple options for obtaining the help they need from TACs.

## CONCLUSION AND RECOMMENDATIONS

Even before the pandemic, taxpayers were not receiving the telephone service they desired or deserved. Not surprisingly, the pandemic exacerbated these service delivery shortcomings. For various reasons, many of which were beyond the control of the IRS because of the pandemic, LOS went from bad to worse. For example, in FY 2021, IRS-wide LOS<sup>69</sup> fell to approximately 21 percent, with the AM LOS reaching a low of four percent in March 2021.<sup>70</sup> Taxpayers suffered significant hardships as a result.

By looking to the example of private industry and other government agencies, the IRS has developed a forward-looking and comprehensive plan as presented in the TFA Report to Congress. However, for these beneficial innovations to come to pass, Congress must step forward and provide the requisite funding. The IRS has taken important steps toward top-quality 21<sup>st</sup> century customer service on its phone lines and in TACs, but it cannot succeed unless Congress agrees to invest in its efforts.

### Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Implement and increase callback technology capacity across all taxpayer-facing telephone lines.
2. Prioritize the rollout of a comprehensive ECM system, which is a prerequisite for meeting the IRS's goal of a robust concierge support system.
3. Implement flexible hiring and training strategies for CSRs to reach and maintain a telephone LOS of at least 85 percent.
4. Engage with outside parties to conduct a study to identify private industry or government best practices and how they might be used to improve IRS phone systems.
5. Conduct a postmortem study to identify specific challenges faced during the last two filing seasons to improve the responsiveness and quality of information provided to taxpayers and practitioners calling its phone lines.
6. Conduct a pilot program for “pop-up” mobile TACs, in concert with stakeholders and community partners, to travel to underserved communities and reach vulnerable taxpayers, with the goal of determining the viability and benefit of this program to taxpayers.

### Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide dedicated multiyear funding sufficient to allow the IRS to improve customer experience in general and telephone service in particular, as described in the TFA Report to Congress.<sup>71</sup>

### RESPONSIBLE OFFICIALS

Charles Rettig, Commissioner, Internal Revenue

Douglas O'Donnell, Deputy Commissioner, Services and Enforcement

Jeffrey Tribiano, Deputy Commissioner, Operations Support

Nancy Sieger, Chief Information Officer

Heather Maloy, Director, IRS Next Office



## IRS COMMENTS

The IRS continues to face extraordinary challenges from the COVID pandemic. However, robust planning and mitigations taken since the start of the pandemic have allowed us to quickly move towards full business resumption. The IRS rapidly deployed laptops to our telephone assistors to shift to a large-scale telework force to handle the unprecedentedly high telephone demand. We started reopening phone lines on June 26, 2020, and by July 18, 2020, had almost 11,000 phone employees back to work assisting customers.

The impacts of the pandemic and the influx of new legislation created a historic increase in telephone demand. During a typical filing season, we average two to three million calls each day. On March 15, 2021, the IRS answered almost 68 million calls from taxpayers, including almost 4 million more taxpayer calls answered by our assistors and 13 million more calls through our automated services compared to the previous fiscal year.

Knowing that there is such an increased demand for our services, the IRS has taken several actions to increase our ability to serve taxpayers in FY 2021 and beyond. We corporately hired thousands of telephone assistors in FY 2021 and are diligently working to increase staffing in FY 2022. We also took steps to reduce the need for a taxpayer to have to contact us. For the third Economic Impact Payment, we issued over 11 million supplemental payments by redetermining the taxpayers eligibility based on their filed 2020 tax return. We also issued over 11 million unemployment compensation exclusion payments rather than the taxpayer having to file an amended return. In 2021 we had mandatory overtime to address inventories, again so that taxpayers would not have to call to check status.

We continue to enhance the customer experience on our telephone applications by expanding the Customer Callback (CCB) service, giving callers an option to receive an automated callback instead of waiting on hold. In 2021 we increased the number of phone lines that offered CCB. In January 2022, the IRS will expand CCB to 31 applications. Since inception, we have offered a callback to about 8.8 million callers, with almost 5 million callers opting to use the service.

The IRS also plans to improve face-to-face services during 2022. We will address critical attrition needs at Taxpayer Assistance Centers (TAC) where the Field Assistance Scheduling Tool identified appointment backlogs for specific types of services (e.g., taxpayer authentication) or where wait time for an appointment is longer than 30 days.

To increase overall service, the IRS is exploring how to migrate from traditional services to an omni-channel service model where taxpayers can get assistance through a variety of ways. We introduced an Artificial Intelligent voicebot service for procedural Economic Impact Payment questions, which has interacted with almost 12 million callers. We concluded a successful Web Service Delivery pilot on May 31, 2021, where we assisted 1,700 taxpayers remotely face-to-face, and are planning a WebSD Phase 2 pilot for 2022 to determine feasibility of a sustainable long-term program. We continue to encourage and support our partner sites who host Virtual Service Delivery technology for taxpayers in their community by providing the resources and tools necessary to serve their clients. Pending additional funding, the IRS is planning to expand omni-channel services to include other voicebots, chatbots, and live chat in future years.

## TAXPAYER ADVOCATE SERVICE COMMENTS

TAS agrees with the IRS that the COVID-19 pandemic brought unexpected and unprecedented phone service challenges. At the same time as it was attempting to address staffing and technology issues, the IRS was confronted with record call volumes largely relating to questions about the effect of pandemic-relief legislation. As a result, IRS phone service, which had been in need of improvement prior to the pandemic, became almost nonexistent at various points in 2021, with LOS on the AM line falling as low as four percent in March and IRS-wide LOS<sup>72</sup> standing at only 21 percent for the fiscal year. Improvement is essential and, to its credit, the IRS has been trying.

TAS applauds IRS efforts to provide systems and procedures that allow taxpayers to obtain the answers they desire without needing to speak with CSRs. This reduction in demand can, in turn, allow the IRS to focus on providing more timely and effective service to those taxpayers who do require assistance from CSRs. Key to this necessary improvement will be continued increases to CSR staffing, the planned expansion of customer callback to virtually all IRS phone lines, and technologies such as voicebots, chatbots, and videoconferencing platforms.

For phone service to reach a level that adequately serves taxpayers, the IRS will need to stay the course and successfully implement these comprehensive plans it has developed and set in motion. Likewise, although funding is neither the cause of nor solution to all that ails IRS phone service, sufficient funding from Congress would prove invaluable in allowing the IRS to more quickly and comprehensively make the upgrades it has planned.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Implement and increase callback technology capacity across all taxpayer-facing telephone lines.
2. Prioritize the rollout of a comprehensive ECM system, which is a prerequisite for meeting the IRS's goal of a robust concierge support system.
3. Implement flexible hiring and training strategies for CSRs to reach and maintain a telephone LOS of at least 85 percent.
4. Engage with outside parties to conduct a study to identify private industry or government best practices and how they might improve IRS phone systems.
5. Conduct a postmortem study to identify specific challenges faced during the last two filing seasons to improve the responsiveness and quality of information provided to taxpayers and practitioners calling its phone lines.
6. Conduct a pilot program for "pop-up" mobile TACs, with stakeholders and community partners, to travel to underserved communities and reach vulnerable taxpayers, to determine the viability and benefit of this program to taxpayers.

### Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide dedicated multiyear funding sufficient to allow the IRS to improve customer experience in general and telephone service, as described in the TFA Report to Congress.<sup>73</sup>

## Endnotes

- 1 IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot, Executive Level Summary (week ending Sept. 30, 2021). These numbers are enterprise-wide rather than particular to a specific phone line.
- 2 Other IRS-supported venues, specifically the Volunteer Income Tax Assistance and Tax Counseling for the Elderly programs, were similarly restricted by the pandemic. *Internal Revenue Service: Narrowing the Tax Gap and Improving Taxpayer Services Before the S. Comm. on Appropriations, Subcomm. on Financial Services and General Gov't*, 117th Cong. (May 19, 2021) (statement of Erin M. Collins, National Taxpayer Advocate).
- 3 Wage and Investment (W&I) Business Performance Review (BPR) Q3 FY 2021 (Aug. 6, 2021); IRS response to TAS information request (Sept. 16, 2021).
- 4 The IRS notes that offices began closing on March 20, 2020, due to stay-at-home orders resulting from COVID-19. IRS response to TAS fact check (Dec. 1, 2021).
- 5 IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Mar. 20, 2021).
- 6 National Taxpayer Advocate Fiscal Year 2022 Objectives Report to Congress 9 (*Review of the 2021 Filing Season*).
- 7 Internal Revenue Manual (IRM) 21.1.1.3, Customer Service Representative (CSR) Duties (Mar. 11, 2021).
- 8 The IRS's formula for determining LOS is substantially more complicated than just number of calls received divided by number of calls answered. The CSR LOS formula is: (Assistor Calls Answered + Automated Calls Answered (Info Messages)) divided by (Assistor Calls Answered + Automated Calls Answered (Info Messages) + Emergency Closed + Secondary Abandons + (Add either Calculated Busy Signal OR Network Incompletes) + (Add either Calculated Network Disconnects OR Total Disconnects)). IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Sept. 30, 2020).
- 9 National Taxpayer Advocate 2020 Annual Report to Congress 30 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information and Insufficient Staffing*); TIGTA, Ref. No. 2019-40-041, *Telephone Performance Measures Do Not Provide an Accurate Assessment of Service to Taxpayers* (June 2019). The LOS calculation excludes all calls where taxpayers hang up during the first few minutes because they do not believe they will receive timely or adequate service and all calls that the IRS telephone system routes to automated responses (based on taxpayer responses to system prompts). To elaborate, the IRS received about 100 million calls in each of FYs 2018, 2019, and 2020. Roughly 35 percent of callers (or 35 million) hung up while on hold, and another 25 million were routed to automated responses, leaving about 40 million calls routed to speak with a CSR. If 20 million calls reached a CSR, the IRS would report that it achieved an LOS of 50 percent (20 million calls answered by CSRs divided by 40 million calls routed to CSRs), even though CSRs answered only 20 percent of the 100 million calls received. The 35 million taxpayers who hung up presumably wanted to speak with a CSR and were not served, yet the IRS's LOS measure excludes them from the computation. IRS, JOC, Snapshot Reports: Enterprise Snapshot, Executive Level Summary (week ending Sept. 30, 2019); IRS, JOC, Snapshot Reports: Enterprise Snapshot, Executive Level Summary (week ending Sept. 30, 2020); IRS, JOC, Snapshot Reports: Enterprise Snapshot, Executive Level Summary (week ending Sept. 30, 2021).
- 10 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Product Line Detail (week ending Sept. 30, 2019); IRS, JOC, Snapshot Reports: Enterprise Snapshot, Product Line Detail (week ending Sept. 30, 2020); IRS, JOC, Snapshot Reports: Enterprise Snapshot, Product Line Detail (week ending Sept. 30, 2021). "Calls answered by percentage" is calculated by dividing "calls answered" by "call attempts." "Enterprise total" refers to all calls across all IRS phone lines. AM manages 35 customer service-related phone lines, including the high-volume 1040 line, as well as phone lines relating to account inquiries. The consolidated ACS phone lines answer taxpayer calls about collection actions. Calls to the Practitioner Priority Service line represent a subset of AM calls.
- 11 William Hoffman, *IRS Phone Help Expected to Set a Record in 2021*, TAX NOTES TODAY (Sept. 27, 2021); National Taxpayer Advocate 2020 Annual Report to Congress 34 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information and Insufficient Staffing*); IRS responses to TAS information requests (Sept. 15, 2021; Sept. 20, 2021).
- 12 National Taxpayer Advocate 2020 Annual Report to Congress 29 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information and Insufficient Staffing*).
- 13 Jeff Rumburg & Eric Zbikowski, *The Seven Most Important Performance Indicators for the Service Desk*, METRICNET, [https://www.thinkhdi.com/~media/HDI/Files/Library-Archive/Rumburg\\_SevenKPIs.pdf](https://www.thinkhdi.com/~media/HDI/Files/Library-Archive/Rumburg_SevenKPIs.pdf) (last visited Sept. 14, 2021).
- 14 National Taxpayer Advocate 2020 Annual Report to Congress 38 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information and Insufficient Staffing*).
- 15 IRS, JOC, Snapshot Reports: Enterprise Snapshot for Enterprise Total, Accounts Management, and Consolidated Automated Collection Service data (weeks ending Apr. 20, 2019, June 30, 2020, and May 22, 2021); IRS, JOC, Snapshot Reports: Product Line Detail for the Form 1040 Line data (weeks ending Apr. 20, 2019, June 30, 2020, and May 22, 2021). The weeks for which TAS pulled data correspond to the final week of the filing season in each of these years. These numbers are for enterprise total. See also National Taxpayer Advocate Fiscal Year 2022 Objectives Report to Congress 9 (*Customer Service Strategy: The IRS Needs to Develop a Comprehensive Customer Service Strategy That Puts Taxpayers First, Incorporates Research on Customer Needs and Preferences, and Focuses on Measurable Results*).
- 16 IRS, JOC, Snapshot Reports: Enterprise Snapshot (Sept. 30, 2021).
- 17 ARPA, Pub. L. No. 117-2.
- 18 National Taxpayer Advocate 2007 Annual Report to Congress 3-12 (Most Serious Problem: *The Impact of Late-Year Tax-Law Changes on Taxpayers*).
- 19 This figure shows AM data because in 2021, AM received approximately 85 percent of the total calls to the IRS. AM is largely responsible for fielding calls relating to customer service, including calls to the 1040 line. IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Mar. 20, 2021).
- 20 The following examples were submitted directly to the National Taxpayer Advocate's Systemic Advocacy Management System (SAMS), which TAS makes available to the general public and IRS personnel as a vehicle for reporting potentially systemic issues encountered with tax administration. For additional examples of specific problems experienced by taxpayers and tax practitioners, see Letter from the Texas Society of Certified Public Accountants to Commissioner Rettig and Deputy Assistant Secretary Mazur (Sept. 15, 2021).
- 21 TAS SAMS Issue #51073, submitted Aug. 31, 2021.
- 22 TAS SAMS Issue #50375, submitted June 23, 2021.
- 23 TAS SAMS Issue #50880, submitted Aug. 2, 2021.

### Most Serious Problem #3: Telephone and In-Person Service

- 24 Leslie Book, *Senators Question Commissioner About Company Offering Fee-Based Access to IRS Phone Lines*, PROCEDURALLY TAXING (Nov. 19, 2021), <https://procedurallytaxing.com/senators-question-company-offering-fee-based-access-to-irs-phone-lines/>.
- 25 Letter from Senators Cassidy, Menendez, Young, and Warner to Commissioner Rettig (Nov. 18, 2021).
- 26 See Most Serious Problem: *IRS Recruitment, Hiring and Training: The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration*, *supra*.
- 27 The Small Business/Self-Employed (SB/SE) Division states that a number of these applications were in process prior to the pandemic. IRS response to TAS fact check (Dec. 1, 2021).
- 28 See *infra* for an in-depth discussion of this plan.
- 29 For example, the IRS has certain statutorily imposed privacy and nondisclosure requirements regarding personal taxpayer information that are more strict than similar requirements to which some commercial organizations are legally or competitively subject.
- 30 Partnership for Public Service, *Government for the People* 6 (Oct. 2020).
- 31 *Id.*
- 32 *Id.* at 5.
- 33 *Id.* at 6. For additional information about The Centers for Medicare and Medicaid, see <https://www.cms.gov/>.
- 34 Karen Hao, *The Pandemic Is Emptying Call Centers. AI Chatbots Are Swooping In*, MIT TECHNOLOGY REVIEW (May 14, 2020), <https://www.technologyreview.com/2020/05/14/1001716/ai-chatbots-take-call-center-jobs-during-coronavirus-pandemic/>.
- 35 *Id.*
- 36 Heather Kelly, *Press 1 for Frustration: Companies Run Into Record Phone Waits as Companies Grapple With Worker Safety*, WASHINGTON POST (Apr. 15, 2020), <https://www.washingtonpost.com/technology/2020/04/14/customer-service-coronavirus/>.
- 37 *Id.*
- 38 TWILIO, *Twilio Study Finds COVID-19 Accelerated Companies' Digital Communications Strategies by Six Years* (July 15, 2020), <https://www.twilio.com/press/releases/twilio-study-finds-covid-19-accelerated-companies-digital-communications-strategy-by-six-years>; Steve Davies, *Nearly 70 Percent of Consumers Moved to Messaging During the Pandemic*, CONVERSOCIAL (Nov. 18, 2020), <https://www.conversocial.com/blog/consumer-habits-digital-solutions-move-to-messaging>. These surveys were conducted by companies offering third-party digital customer support. Although the underlying surveys are unavailable, the cited data is taken from publications of these companies.
- 39 Ian Jacobs, *Predictions 2021: It's All About Empathy, Digital, and Virtualizing Customer Care*, FORRESTER (Oct. 21, 2020), <https://www.forrester.com/blogs/customer-service-predictions-2021/>.
- 40 TFA, Pub. L. No. 116-25, 133 Stat. 981 (2019).
- 41 TFA, Pub. L. No. 116-25, 133 Stat. 981 (2019) §§ 1101 & 2101(a), 133 Stat. at 985, 1008.
- 42 IRS, Pub. 5426, *Taxpayer First Act Report to Congress* 46 (Jan. 2021).
- 43 *Id.* In 2019, the IRS introduced customer callback to one of its phone applications. Currently, callback is available on 16 phone applications, and the IRS plans to expand it to cover 31 phone applications by the end of FY 2022. By 2024, the IRS hopes to have callback available on all its telephone applications. Even with this limited initial rollout, the IRS estimates that customer callback has saved taxpayers approximately 1.8 million hours of hold time in FY 2021. IRS response to TAS information request (Sept. 15, 2021). Once taxpayers are able to opt for callback on assistance-focused phone lines, they will have improved access to resources that will enable them to better comply with their tax obligations, potentially decreasing downstream call volume on examination- and collection-focused phone lines.
- 44 IRS response to TAS fact check (Dec. 3, 2021).
- 45 National Taxpayer Advocate 2020 Annual Report to Congress 34 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information and Insufficient Staffing*). See also IRS, Pub. 4450, *Congressional Budget Justification & Annual Performance Report and Plan Fiscal Year 2022*, at 1 (May 2021).
- 46 IRS, Pub. 5530, *Budget in Brief: FY 2022*, at 2 (June 2021), <https://www.irs.gov/pub/irs-pdf/p5530.pdf>.
- 47 National Taxpayer Advocate 2020 Annual Report to Congress 34 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information and Insufficient Staffing*); IRS response to TAS information request (Sept. 15, 2021); IRS response to TAS information request (Sept. 20, 2021). This number for FY 2021 is derived by adding the FY 2021 subtotal of CSRs provided by W&I to the FY 2021 CSR total provided by SB/SE. These staffing numbers are subject to constant change, and for FY 2021, TAS is using the estimates provided by W&I and SB/SE in its information request responses, which were accurate as of the dates of those responses.
- 48 William Hoffman, *IRS Phone Help Expected to Set a Record in 2021*, TAX NOTES TODAY (Sept. 27, 2021).
- 49 Most Serious Problem: *Online Accounts: IRS Online Accounts Do Not Have Sufficient Functionality and Integration With Existing Tools to Meet the Needs of Taxpayers and Practitioners*, *infra*.
- 50 Most Serious Problem: *Digital Communications: Digital Communication Tools Are Too Limited, Making Communication With the IRS Unnecessarily Difficult*, *infra*.
- 51 Most Serious Problem: *E-Filing Barriers: Electronic Filing Barriers Increase Taxpayer Burden, Cause Processing Delays, and Waste IRS Resources*, *infra*.
- 52 Most Serious Problem: *Transparency and Clarity: The IRS Lacks Proactive Transparency and Fails To Provide Timely, Accurate, and Clear Information*, *infra*.
- 53 *Internal Revenue Service: Narrowing the Tax Gap and Improving Taxpayer Services Before the S. Comm. on Appropriations, Subcomm. on Financial Services and General Gov't*, 117th Cong. 13 (May 19, 2021) (statement of Erin M. Collins, National Taxpayer Advocate).
- 54 The basis for the presumed shortfall is that LOS would need to improve from 21 percent to 85 percent. It is difficult to imagine any way that such a large jump in LOS could be immediately achieved by only a 13.65 percent proportional increase in funding. IRS, JOC, Snapshot Reports: Enterprise Snapshot, Executive Level Summary (week ending Sept. 30, 2021).
- 55 *Internal Revenue Service: Narrowing the Tax Gap and Improving Taxpayer Services Before the S. Comm. on Appropriations, Subcomm. on Financial Services and General Gov't*, 117th Cong. 13 (May 19, 2021) (statement of Erin M. Collins, National Taxpayer Advocate).
- 56 In some instances, walk-in assistance may also be available. See IRM 21.3.4.2.4.2, *TAC Appointment Exception Procedures* (Oct. 1, 2019); IRM 21.3.4.2.4.5.5.2, *Hardship and Other Unique Situations* (Jan. 13, 2020).
- 57 IRM 21.3.4.2, *Standard Services in a Taxpayer Assistance Center (TAC)* (Jan. 22, 2021).
- 58 IRM 21.3.4.2.4.3.1(1), *Backup Work Procedures* (Feb. 5, 2021).

### Most Serious Problem #3: Telephone and In-Person Service

- 59 National Taxpayer Advocate 2020 Annual Report to Congress 28 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information and Insufficient Staffing*); W&I response to TAS information request (Sept. 16, 2021).
- 60 IRS response to TAS information request (Sept. 15, 2021).
- 61 W&I BPR Q3 FY 2021 (Aug. 6, 2021).
- 62 W&I job announcement email (Sept. 25, 2021) (on file with TAS).
- 63 IRS response to TAS information request (Sept. 15, 2021).
- 64 IRS response to TAS fact check (Dec. 3, 2021).
- 65 *Internal Revenue Service: Narrowing the Tax Gap and Improving Taxpayer Services Before the S. Comm. on Appropriations, Subcomm. on Financial Services and General Gov't*, 117th Cong. 16 (May 19, 2021) (statement of Erin M. Collins, National Taxpayer Advocate).
- 66 This discussion regarding the application of widely available videoconferencing and the beneficial impact it would have on TAC services is broadly applicable to other aspects of the IRS as well. The analysis here, however, is limited specifically to TACs.
- 67 For example, the U.S. Tax Court has been energetic in conducting court proceedings remotely. See U.S. Tax Court, Administrative Order 2021-01 (Aug. 27, 2021).
- 68 National Taxpayer Advocate 2020 Annual Report to Congress 43 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information and Insufficient Staffing*).
- 69 The IRS-wide LOS is known internally as the Enterprise-wide LOS and does not include every phone line.
- 70 IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Mar. 20, 2021); IRS, JOC, Snapshot Reports: Enterprise Snapshot, Executive Level Summary (week ending Sept. 30, 2021).
- 71 National Taxpayer Advocate 2020 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 3-6 (Revamp the IRS Budget Structure and Provide Sufficient Funding to Improve the Taxpayer Experience and Modernize the IRS's Information Technology Systems).
- 72 The IRS-wide LOS is known internally as the Enterprise-wide LOS and does not include every phone line.
- 73 National Taxpayer Advocate 2020 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 3-6 (Revamp the IRS Budget Structure and Provide Sufficient Funding to Improve the Taxpayer Experience and Modernize the IRS's Information Technology Systems).

## TRANSPARENCY AND CLARITY: The IRS Lacks Proactive Transparency and Fails to Provide Timely, Accurate, and Clear Information

### WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

The taxpayer's *right to be informed* is the first of the ten fundamental taxpayer rights in the Taxpayer Bill of Rights. Being proactively transparent – providing information to the public without it being formally requested by citizens<sup>1</sup> – and ensuring information is timely, accurate, and clear are key components of this right, and will help taxpayers to voluntarily comply with their tax filing and payment obligations.<sup>2</sup>

U.S. tax laws and procedures are complex, and compliance was made even more difficult by the COVID-19 pandemic, which created additional burdens for taxpayers, tax professionals, and the IRS itself. The pandemic has highlighted the need for the IRS to proactively release critical information to taxpayers in real-time. Although the pandemic focused our attention on the recent filing season challenges, the National Taxpayer Advocate believes the IRS's lack of proactive transparency and its failure to provide critical information in a manner that is easy for the public to understand and locate were a problem long before the pandemic.

During the past two filing seasons, taxpayers and tax professionals were exasperated by the lack of information on the processing of returns and refunds and correspondence delays. Taxpayers were desperately seeking answers regarding time delays. The IRS made only limited information on delays available, and what was available was vague and did not provide the specifics taxpayers needed, such as when their returns would be processed or when they would receive their refund. Taxpayers faced compounding frustration when trying to locate information on IRS.gov, which is difficult to navigate.

### EXPLANATION OF THE PROBLEM

The IRS is not consistently open and transparent and does not provide clear and timely information about what taxpayers *need to know*. Unfortunately, during the past two filing seasons – times in which taxpayers were in desperate need of information – the IRS failed to provide timely updates regarding the status of IRS operations, the challenges it was facing, and what taxpayers could expect during their IRS interactions. This lack of proactive transparency and timely information left taxpayers confused and frustrated, reaching for the phones, searching the internet, or looking to tax professionals for help. Specifically:

- Taxpayers could not access the status details of IRS operations, such as a filing season backlog, delayed refunds, returns pulled for inconsistencies, or amended return processing delays;
- IRS tools and apps do not provide taxpayers the details they need;
- Taxpayers are confused by unclear notices and IRS guidance;
- Taxpayers don't always understand the IRS's reasons for its decisions, as a rationale is not always provided;
- Taxpayers have difficulty locating information and answers to questions on IRS.gov because the site is challenging to navigate; and
- The IRS does not inform taxpayers how it will store, safeguard, and use data that artificial intelligence (AI) will analyze as part of its new online services initiative.



TAS recommends that the IRS take additional steps to be proactively transparent by providing timely, clear-cut, and understandable “need-to-know” taxpayer information, whether it addresses filing season issues or updates general guidance or other administrative matters.

### **Lack of Proactive Transparency Meant Taxpayers Could Not Access the Status Details of IRS Operations, Such as Annual Filing Season Updates, Delayed Refunds, Returns Pulled for Inconsistencies, or Amended Return Processing Delays**

During the 2021 filing season, the IRS experienced significant delays in processing a number of forms submitted by taxpayers, including returns and amended returns. The majority of these delays can be attributed to factors outside the IRS’s control (*e.g.*, forced staffing reductions caused by the pandemic, tax law changes that occurred shortly before or during the filing season, and antiquated technology that is ill-equipped to function in the modern age and is incompatible with the demands of today’s tax administration). The IRS provided minimal information during Filing Season (FS) 2021 (February 12, 2021, through May 17, 2021) regarding these delays and the expected timeframe to work through them. Its failure to provide taxpayers with real-time information regarding its operations left taxpayers trying to understand what was transpiring. Some of the processing delays lacking transparency included:

- *Returns:* At the end of FS 2021, the IRS’s Error Resolution System (ERS) inventory included 10.3 million individual and business returns, compared with 1.6 million individual and business returns at the end of the 2020 filing season – a 544 percent increase, and approximately 16.8 million individual and business paper returns awaited processing, compared with 4.3 million paper returns at the end of FS 2020 – a 291 percent increase.<sup>3</sup>
- *Amended Returns:* At the end of FS 2021, there were 2.7 million unprocessed individual amended tax returns in the IRS’s inventory, compared with 600,000 unprocessed individual amended tax returns at the end of FS 2020 – a 350 percent increase.<sup>4</sup>
- *Form 2848:* Since October 3, 2020, the average time the IRS takes to process a Form 2848, Power of Attorney and Declaration of Representative, has fluctuated from five days to over 70 days, and the percentage of “overage” inventory (*i.e.*, unprocessed for over five days) is 80 percent.<sup>5</sup>
- *Form 941X, Adjusted Employer’s Quarterly Federal Tax Return or Claim for Refund; Form 1139, Corporation Application for Tentative Refund; Form 1045, Application for Tentative Refund; and Form 8802, Application for United States Residency Certification,* all experienced long processing delays.<sup>6</sup>

As mentioned above, the IRS did not, on its website or anywhere else, disclose information regarding these delays during FS 2021. In fact, in regard to the processing of Form 2848, the IRS had previously posted updates on its website, but it has recently removed all information from IRS.gov about delayed processing times.<sup>7</sup>

### **The IRS Provides Status Updates on Processing Returns and Forms, But the Updates Need to Occur More Regularly and Be Presented in a Clearer, Easier-to-Understand Layout**

The IRS did eventually begin providing taxpayers information regarding these processing delays. After much prompting by the National Taxpayer Advocate and outside stakeholders, the IRS created a webpage, “IRS Operations During COVID-19: Mission-critical functions continue” (hereafter called the Operational page), where it posts information about a number of processing issues, such as delays in processing returns and amended returns.<sup>8</sup> This page also includes general information on processing and delays of Forms 1139, 1045, 2848, and 8802, along with a number of other topics.<sup>9</sup>

The current format of the Operational page is broken up into three main categories with multiple subcategories, all of which include narrative discussions on these topics, and some of which provide relevant data. The three main categories are:

- What You Can Expect;
- Other Services; and
- IRS Enforcement and Compliance Operations.

The What You Can Expect category has 11 subcategories that address the IRS's timeframes for opening mail, processing refunds on error-free returns, and processing returns where the IRS identified errors through manual review.

TAS is encouraged by this development, but the data provided is limited, inconsistently updated, and challenging to navigate.<sup>10</sup> To improve this page, TAS has suggested for the upcoming 2022 filing season a summary form with key information showing where the IRS is at in processing returns and other forms. This could be accomplished by including a link that would take the user to a dashboard that provides specific data regarding processing. For example, under What You Can Expect, the taxpayer could click on "Return Processing of Original Returns" to go to an easy-to-read dashboard that would illuminate the IRS's progress in processing returns and issuing refunds.

This dashboard could show:

- The number of current returns received for processing;
- The number of returns that have been worked so far in the current filing season;
- The total number of returns remaining in IRS inventory; and
- When (month and week) taxpayers actually submitted the returns the IRS is currently working.

TAS has been working with the IRS to increase the data available to taxpayers and has recommended the page be updated weekly. This would illustrate the IRS's overall progress in working through its inventory and provide taxpayers with more information about where their returns are at in the processing pipeline. This information would have been invaluable to taxpayers during the last two filing seasons.

TAS urges the IRS to make these adjustments to its Operational page, including a filing season dashboard, by the start of the 2022 filing season so taxpayers can obtain as much information as possible regarding IRS operations in a user-friendly layout throughout the filing season. The implementation of a dashboard would have the added benefit of reducing the number of taxpayer calls to the IRS inquiring about return and refund status.<sup>11</sup> In addition to making more information available to taxpayers, the use of a dashboard will also give external stakeholders and Congress more information by which the IRS's effectiveness can be evaluated, holding it more accountable to both the public it serves and the institution from which it receives funding.

### **IRS Tools and Apps Do Not Provide Taxpayers the Details They Need**

When taxpayers check the status of their refunds on the Where's My Refund? or Where's My Amended Return? tools or the IRS2Go app,<sup>12</sup> they typically receive one of three responses:

- Return received;
- Refund approved; or
- Refund sent.<sup>13</sup>

These tools provide taxpayers important and useful information as long as there are no delays or problems with processing. However, when the processing of taxpayers' returns is delayed, they will receive the message "return received" day after day or week after week. The IRS should provide additional details informing taxpayers of the reasons for the delay, the expected timeframe for resolution, and next steps.

Unfortunately, the IRS cannot provide specifics about a taxpayer's refund for returns going through the review process prior to being posted to IRS systems. It could, however, link to the dashboard in Where's My Refund? or Where's My Amended Return? to provide taxpayers with more details on where the IRS is at in processing returns. Even one simple change to Where's My Refund? could state:

We have received your return, and it is being processed. We can't provide specific information on the processing of your return because it hasn't yet been posted to our system. However, the following link will provide you with general information on our timeline in processing returns.

The IRS could modify Where's My Refund?, Where's My Amended Return?, and IRS2Go to provide taxpayers with more specific information about where the return has posted to IRS systems and a specific code identifying the delay has been input. If the IRS cannot add such specificity to these tools, it should add the information to a taxpayer's online account. For example, after the IRS posts a return to IRS systems, it uses filters to screen for possible non-identity theft refund fraud. The IRS may select the return for further review if the filters give a score to the return that exceeds a certain threshold.<sup>14</sup> In these situations, Where's My Refund?, Where's My Amended Return?, and IRS2Go could state:

We are verifying the income and withholdings on your return against documents provided by third parties, such as your employer. Often, this delay is minor, and you don't need to do anything. We apologize for the delay but want to protect your data. We will be sending you a notice that will provide more detail if we need additional information, within XX weeks.

By providing taxpayers with more information on their online account, Where's My Refund?, Where's My Amended Return?, and IRS2Go, the IRS can reduce taxpayers' anxiety about their refund status and provide useful information so they can plan accordingly. Providing taxpayers with more information about the status of their refund will also likely reduce the number of incoming calls to IRS toll-free telephone lines.

## **Taxpayers Are Confused by Unclear Notices and IRS Guidance**

### ***IRS Notices Do Not Adequately Explain Issues or How to Resolve Them***

Notices are the primary vehicle by which the IRS provides taxpayers with information. Many notices sent to taxpayers contain critical information about issues, including statutory time periods, reasons the IRS is holding a refund, and what a taxpayer needs to do to resolve an issue. Over the years, the IRS has worked to improve the clarity of its notices, yet some critical notices remain confusing and vague and don't provide taxpayers adequate contact information. The IRS limits the number of characters and words in its notices in an effort to contain costs, in addition to other factors. Although these are legitimate concerns the IRS must consider, it is still essential and quite possible for the IRS to develop clear, concise notices.

### ***Math Error Notices***

Over the years, Congress has specified certain circumstances in which the IRS can bypass normal deficiency procedures and make a summary assessment.<sup>15</sup> In these situations, the IRS will send taxpayers a math error notice informing them of an adjustment and providing 60 days from the date of the notice for taxpayers to request an abatement.<sup>16</sup>

If the IRS receives a timely abatement request, it must withdraw the summary assessment. If it decides to pursue the matter, the IRS must do so through an examination that gives rise to normal deficiency procedures and preserves the taxpayer's right to petition the U.S. Tax Court – the only forum in which taxpayers need not pay the tax before filing a petition. If the taxpayer does not timely request abatement, the IRS may begin collecting the tax due, and taxpayers lose their ability to have the merits reviewed by the U.S. Tax Court.

Thus, these notices are communicating critical information, such as a period by which the taxpayer must respond or else collection action will commence, and an explanation of the adjustment and how the IRS is correcting it. Unfortunately, math error notices do not clearly articulate what the IRS adjusted and why, and they do not provide key timing information on the top of the notice. This leaves taxpayers confused as to what changes the IRS made to their return and makes it difficult for taxpayers to determine whether they agree or disagree with the changes and what they need to do when. More taxpayers than ever were confused during calendar year (CY) 2021 as the number of math errors had significantly increased. During CY 2021 through November 11, 2021, the IRS issued more than 14 million math error notices, an increase of about 658 percent compared to the comparable date in CY 2020.<sup>17</sup>

Similar to a notice of deficiency, the IRS needs to reformat math error notices highlighting key information and prominently displaying the response date on the top of the notice. Specifically, the IRS could revise the notice by placing at the top of the page what the IRS has adjusted and why, along with the 60-day time period to request abatement. Further, due to the importance of a math error notice, these notices should be sent by certified or registered mail, similar to other comparable notices such as the notice of deficiency.

In some instances, notices do not even specify the exact reason for the correction; rather, they provide a list of possible errors that the IRS may have addressed through its math error authority, leaving the taxpayer to wonder what, if anything, they did wrong and which of the bullets applies to their tax return.

**Math Error Example: Changes to your 2020 tax return.**

We changed your information because:

- We changed the amount claimed as Recovery Rebate Credit on your tax return. The error was in one or more of the following:
  - The Social Security number (SSN) of one or more individuals claimed as a qualifying dependent was missing or incomplete.
  - The last name of one or more individuals claimed as a qualifying dependent does not match our records.
  - One or more individuals claimed as a qualifying dependent exceeds the age limit.
  - Your adjusted gross income exceeds \$75,000 (\$150,000 if married filing jointly, \$112,500 if head of household).
  - The amount was computed incorrectly.<sup>18</sup>

The following is proposed revised math error notice language:

**Example:** An item on your return is inconsistent with the IRS's records. We have adjusted your return based upon our records and increased your tax due (or reduced your refund paid). If you disagree with this adjustment, you need to contact us **within 60 days of the date of this notice**. We will then reverse the adjustment we made to your account and provide you an opportunity to support the item claimed on your return. However, if you do not timely contact us, the adjustment to tax will be final, payment will be due, and you will not have an opportunity to contest this adjustment in the U.S. Tax Court.

We adjusted line X of your return in the amount of \$XX. Based upon our records, we changed this entry to (provide specifics) ... and your tax due has increased from \$Y to \$Z.

**Refund Fraud Notices**

When the IRS's refund fraud filters select a return as potentially fraudulent, the IRS sends Letter 4464C, Questionable Refund Hold, and informs the taxpayer it is verifying the income and withholdings on his or her return with information reported under the taxpayer's name and SSN by employers, banks, or other payers. Specifically, Letter 4464C says:

We selected your return to verify one or more of the following:

- Income
- Income tax withholding
- Tax credits
- Business income

We'll hold your refund until we finish our review.

Similar to the math error notice, this notice doesn't specifically tell taxpayers what the IRS is reviewing, which leaves taxpayers to wonder why the IRS is holding their return, what information it is verifying, the timeframe, and whether taxpayers can do anything to speed up the process. The following is an example of language that would provide taxpayers more precise information:

**Example:** During processing of your tax return, our systems noted an inconsistency. Before paying the refund, we are verifying the accuracy of your return, specifically the amount of income (*e.g.*, wages) and withholding. At this time, you do not need to provide any additional information. You should receive a notice providing more details within the next XX days. If we cannot verify that the information on your return is accurate, we will contact you to verify the items on your return, such as income or withholding.<sup>19</sup>

The IRS's revision of notices similar to those discussed above would provide taxpayers a clearer picture of what action the IRS has taken on their account and what steps they need to take to timely address the issue.

Not only are IRS notices confusing, but some of them don't include useful contact information. For example, correspondence audit notices only provide taxpayers a general toll-free number, not a direct phone number to an IRS employee.<sup>20</sup>

Additionally, many IRS notices don't provide taxpayers context as to where the notice places their issue in the maze of tax administration. One way to address this would be including in their online accounts a feature that allows taxpayers to identify exactly where their current issue is on the map of tax administration (*i.e.*, Exam, Collection, or Appeals). This feature could reference or mirror TAS's own interactive Taxpayer Roadmap, which assists taxpayers in pinpointing their location in the tax system.<sup>21</sup> For example, when taxpayers receive a notice, they could enter the notice number into a search engine, and it would say "you are here," providing information regarding their location in the process. This feature would become more useful as the IRS continues to increase the number of notices it posts to taxpayers' online accounts.

### Taxpayers Are Confused by Some Incomplete or Inaccurate IRS Guidance

In addition to notices, other information provided to taxpayers such as Frequently Asked Questions (FAQs) are also unclear and vague. For instance, the IRS states in an FAQ that taxpayers can log into the Advance Child Tax Credit (AdvCTC) portal and adjust the number of qualifying children they are claiming. Specifically, FAQ F8 asks,

What if I will claim a child on my 2021 tax return but did not claim that child on my 2020 tax return?

and provides this answer, in part,

Later this year, the Child Tax Credit Update Portal (CTCUP) will be updated to allow you to inform us about the qualifying children you will claim on your 2021 tax return so that we can adjust your estimated 2021 Child Tax Credit – and therefore adjust the amount of your monthly advance Child Tax Credit payments.<sup>22</sup>

This FAQ fails to inform taxpayers that if they went from having no qualifying child in 2020 to having one in 2021, they cannot make the adjustment on their AdvCTC profile and will have to wait to claim the credit when filing their 2021 return.<sup>23</sup> This ambiguous FAQ left taxpayers wondering if they would receive AdvCTC for a dependent who became eligible in 2021 and attempting to make the adjustment only to learn they could not.

Another example arose when the IRS postponed until January 3, 2022, the filing and payment deadlines for taxpayers affected by Hurricane Ida.<sup>24</sup> The announcement failed to point out that the IRS will no longer accept electronically filed returns after November 20, 2021. Including this critical information in the announcement might have prompted taxpayers to act early to avoid having to file by mail and averting longer processing times for paper returns.<sup>25</sup> In another situation, the IRS failed to provide taxpayers with any guidance on changes that were occurring to their account. Specifically, two private collection agencies (PCAs) that collectively held 1.2 million taxpayer accounts transferred those accounts back to the IRS after their contracts expired.<sup>26</sup> Although the PCAs provided a special letter to approximately 17,000 of the 1.2 million taxpayers with payment arrangements, the IRS failed to directly inform taxpayers of this development, which was a critical omission because payment arrangements organized by the PCAs would be terminated, and taxpayers would need to work directly with the IRS to set up new payment plans.<sup>27</sup> However, to address these concerns, the IRS sent letters to taxpayers in November 2021 who had payment arrangements with PCAs that were ending because of the contract change. These letters provided taxpayers with a designated phone number and mailing address to work directly with the IRS to establish an installment agreement or pursue other resolutions.

It is critical that taxpayers receive timely, complete, and accurate information as they have the *right to be informed*. Thus, it is imperative that the IRS be proactive in including vital information when it becomes clear it was originally omitted. In other words, if the IRS knows something, it needs to say it publicly, timely, accurately, and clearly. Failure to do so may well lead to more complications and problems for taxpayers, requiring additional time and resources by taxpayers, tax professionals, and the IRS to resolve.

**It is critical that taxpayers receive timely, complete, and accurate information as they have the *right to be informed*. Thus, it is imperative that the IRS be proactive in including vital information when it becomes clear it was originally omitted.**

### **Taxpayers Don't Always Understand the IRS's Reasons for Its Decisions, as a Rationale Is Not Always Provided**

Taxpayers can obtain guidance as to how they should interpret tax laws and regulations and what steps they need to take to comply with their tax filing and payment obligations. As the above example regarding the AdvCTC illustrates, the IRS has heavily relied on issuing FAQs, a fast and efficient means of disseminating guidance to taxpayers on recently enacted tax legislation. In addition to the vague, unclear, and cumbersome nature of some FAQs, the IRS does not offer taxpayers the rationale on how the IRS arrived at its conclusions.

For example, during the first round of the stimulus payments (Economic Impact Payments (EIPs)), questions arose as to whether incarcerated individuals and deceased taxpayers were eligible to receive EIPs. Despite no specific carveout for this situation under the law,<sup>28</sup> in May 2020, the IRS issued FAQs instructing individuals who were incarcerated to return their EIPs.<sup>29</sup> Also, it directed payments made to deceased taxpayers to be returned to the IRS by the decedent's surviving spouse, family, or estate.<sup>30</sup>

These FAQs provided no justification or rationale as to how the IRS reached these conclusions, and in fact, the IRS later changed the guidance regarding incarcerated individuals as a result of the outcome of a lawsuit.<sup>31</sup> Taxpayers would have more confidence in the IRS's guidance if it included – particularly in its FAQs – a discussion regarding the justification and rationale behind its decisions.



## **Taxpayers Have Difficulty Locating Information and Answers to Questions on IRS.gov Because the Site Is Challenging to Navigate**

IRS.gov provides taxpayers with a wealth of information, including:

- Forms, instructions, and publications;
- Press releases;
- FAQs; and
- Discussions on popular topics such as deductions and credits.

The information taxpayers need to answer their questions and comply with their tax filing and payment obligations may be available somewhere on the over 30,000 webpages comprising IRS.gov, but finding the exact information on the website is so challenging that the website's value is reduced, and there are inconsistencies and duplications.<sup>32</sup> Compounding this challenge is the search engine on IRS.gov, which is not useful in pinpointing the information the taxpayer needs because search results are overly broad, wasting hours of taxpayers' time.<sup>33</sup>

The IRS will address a number of these issues as part of its online services initiative developed in response to the Taxpayer First Act.<sup>34</sup> For example, the "Seamless Experience" includes wait time transparency, concierge navigation support, and AI-powered informational webchat, among other things. Specifically, the chatbot feature on IRS.gov would attempt to answer taxpayers' questions or point to useful resources on the website.<sup>35</sup> If the chatbot cannot resolve a taxpayer's issue, contact routing will guide the taxpayer to live support from an IRS employee.<sup>36</sup> Further, the plan's call for wait time transparency is another critical piece of information that will help taxpayers. In addition to including wait times when a taxpayer is on hold with IRS customer service, the IRS could post Levels of Service and wait times on IRS.gov, so taxpayers could consult the website and determine the best time to call.<sup>37</sup>

These enhancements are exciting, but the timetable for implementation extends to the year 2030. In the meantime, the IRS should begin the process of taking steps to make IRS.gov more user-friendly by eliminating duplication, reducing the amount of information on a single page, and enhancing its search engine.<sup>38</sup>

## **The IRS Does Not Inform Taxpayers How It Will Store, Safeguard, and Use Data That Artificial Intelligence Will Analyze as Part of Its New Online Services Initiative**

The IRS's venture into using new AI technology will undoubtedly provide taxpayers with more and improved online customer service options. However, these modern services come with new questions and concerns, such as how the IRS will store, use, and safeguard the data the AI-run programs collect.<sup>39</sup>

To instill trust in how it uses AI, the IRS should:

- Publicly identify the goals and rationales of using AI;
- Organize an internal review to monitor how the IRS is using AI; and
- Prioritize to whom it will be transparent regarding its use of AI. This should include internal administrators, taxpayers, oversight agencies, and Congress.<sup>40</sup>

The degree to which the IRS needs to safeguard information and specify its use may vary depending upon whether the information collected is taxpayer-specific or is of a more general nature, like a taxpayer asking the chatbot, "What qualifies as a charitable deduction?" All data collected may have the potential for misuse, but the risks and concerns may increase if that data is taxpayer-specific.

The IRS should also disclose which, if any, vendors will design and implement the systems that will use AI and if these systems will share any information with the vendor or any other external entities. It is imperative that the IRS reassure taxpayers that it will use appropriately and fairly the information it collects, as any reasonable doubt would stifle taxpayers' willingness to use these services.<sup>41</sup>

## CONCLUSION AND RECOMMENDATIONS

The IRS devotes significant effort to keeping taxpayers informed, but it is not proactively transparent about its operations. Information it provides taxpayers is often unclear and ambiguous, and locating certain information can be challenging. Frequently, taxpayers and tax professionals receive confusing and inaccurate information from the IRS or cannot reach an IRS assistor. Frustrations within the tax and accounting professional community are at an all-time high, and uncertainties are shared by practitioners about the upcoming 2022 tax filing season while many 2019 and 2020 tax returns remain unprocessed. Providing taxpayers with more information that is timely, clear, and easy-to-find will improve taxpayers' understanding of the tax system, how the IRS operates, and what actions the IRS is taking on their accounts. As the IRS addresses some of these issues by leveraging new technologies with an eye toward improving taxpayer interactions with its website and other online services, it needs to articulate what safeguards will be in place to protect this information and ensure the IRS is using that information appropriately.

### Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Create a filing season dashboard and provide weekly information on the filing season, including the total number of returns in inventory, number of returns beyond normal processing times, number of returns in suspense status, and the anticipated timeframes for working through them, while acknowledging that the situation is fluid and timeframes may change along with circumstances.
2. Improve Where's My Refund?, IRS2Go, or online accounts by providing taxpayers specific information about the cause of their refund delay and an estimated date when the IRS might issue their refund.
3. Revise math error notices to identify the exact adjustment the IRS is correcting and the time period for requesting abatement, all in the first paragraph of the notice, and include the date by which a taxpayer must request an abatement at the very top of the notice.
4. Send all math error notices to taxpayers by certified or registered mail.
5. Revise Letter 4464C to include more details about the items the IRS is reviewing and when the IRS will release the refund.
6. Include a roadmap feature on taxpayers' online accounts that will show where a taxpayer's return is in the tax administration process (*i.e.*, Collection or Exam).
7. When extending filing deadlines, ensure taxpayers have the option to e-file their returns.
8. Develop internal procedures for how the IRS will store, use, and safeguard data collected by AI-run programs and publicly provide this information on its website.

### Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 6213(b)(1) to require:
  - That all math error notices include an explanation of the specific error being alleged;
  - That all math error notices include a statement that the taxpayer has 60 days from the date of the notice to request that the summary assessment be abated; and
  - That all such notices will be sent either by certified or registered mail.

## RESPONSIBLE OFFICIALS

Douglas O'Donnell, Deputy Commissioner, Services and Enforcement  
 Jeffrey Tribiano, Deputy Commissioner, Operations Support

## IRS COMMENTS

At a time when the IRS has faced consequential resource challenges, it has also been called upon to take on new, significant responsibilities. We are aware of and appreciate the frustration felt by taxpayers, tax professionals and IRS employees caused by the high volume of unprocessed returns, the limited information available to taxpayers regarding the status of their returns, the refund delays and the difficulty reaching IRS employees. Our employees have experienced similar frustrations as their ability to provide quality service and timely responses during the pandemic has been significantly hampered by staffing and resource shortages, the initial closures of numerous facilities to protect the health and safety of everyone, and legislative changes during the filing season.

During the pandemic, the IRS faced unprecedented volumes of inventory and phone calls coupled with extraordinary challenges in managing socially distanced and remote work when evacuation orders effectively prevented the IRS from returning to the office in pre-pandemic numbers. In addition to the ongoing pandemic-related challenges, there have been legislative changes that would have significantly increased filings of amended returns and created further backlogs, if proactive steps had not been taken by the IRS to adjust accounts and issue refunds directly to taxpayers.

To assist with the 2022 filing season, IRS is taking steps to ensure taxpayers have access to the necessary information about any 2021 advance payments received to file an accurate return. In January 2022, the IRS' Online Account will provide the amount of payments received for the third Economic Impact Payment and the summary information for the 2021 Advance Child Tax Credit. Summary information for the 2021 Advance Child Tax Credit will also be available in the Child Tax Credit Update Portal.

The pandemic created economic hardships for many Americans, making it paramount for the IRS to implement three rounds of stimulus payments – the largest economic rescue package in history, totaling over \$830 billion – and issue tax refunds. The IRS processes most refund returns without any further action or intervention required by taxpayers or the IRS and issues the vast majority of refunds within 21 days of filing. Taxpayers can check their refund status on the Where's My Refund? (WMR) online application, an easy-to-use tracker that provides three basic statuses at the top of the screen – return received, refund approved, or refund sent. WMR can also provide responses with more detailed explanations about math errors and adjustments to taxpayers based on their account data. We agree with the NTA recommendations to provide taxpayers with more detailed account information in situations that warrant it.

The IRS plans to integrate refund status information into Online Account applications. These plans are in addition to the existing WMR tool, which will remain available outside of Online Account and can serve taxpayers without the need to create an account, which requires more stringent authentication. The IRS is beginning a research effort in early 2022 to further review specific taxpayer needs and expectations regarding online reporting of refund status. The IRS will use the outcomes of this research to help inform updates to WMR and the Where's My Amended Return? application. The IRS is scheduled to deploy additional features that will allow taxpayers to select their preferences to opt in/out of receiving certain notices by paper or electronically and opt in for email notifications to receive alerts when a new notice has been delivered to their Online Account. There are currently eleven notices available on the Notices and Letters tab within Online Account, and the IRS will continue to expand the number and types of notices available for viewing through their Online Account as funding permits.

The IRS is currently working with the Taxpayer Advocate Service to develop a plan to provide more current data and post meaningful updates on IRS.gov and through internal reporting channels to support the efforts of our employees and provide the National Taxpayer Advocate critical information to assist customers. The IRS is committed to continuing to improve internal and external reporting.

## TAXPAYER ADVOCATE SERVICE COMMENTS

The National Taxpayer Advocate understands the wide-ranging challenges the IRS has encountered since the beginning of the pandemic, and TAS recognizes that the IRS has provided voluminous amounts of information to taxpayers, tax professionals, and the public as a whole. Despite these efforts, however, IRS transparency both during and before the pandemic is often limited, and information provided to taxpayers is unclear and difficult to access.

As another challenging filing season approaches, the IRS needs to act swiftly to identify areas where it can provide taxpayers with more information about the status and timing of returns and other key forms. One specific action the IRS could take that would provide more transparency would be the creation of a dashboard that would include processing return status and other critical filing season information. The IRS has taken a step in this direction by creating an Operational page on its website, but to maximize its usefulness, it must provide more specific and updated information regarding the IRS's processing efforts. The National Taxpayer Advocate is pleased that the IRS is working with TAS to determine what type of information can be posted on its Operational page and how best to present this information. With the filing season quickly approaching, the time to act and make this dashboard a reality is now.

Additionally, the updates most commonly received by taxpayers on the IRS's Where's My Refund? tool (*i.e.*, return received, refund approved, or refund sent) are helpful but in too many cases lack specificity and lead to taxpayers picking up the phone to obtain more information on their refund status, thereby bogging down an already overwhelmed phone system. Moving forward, the IRS should identify opportunities where it can provide more specific information on its Where's My Refund? tool on the reasons for refund delays, such as a taxpayer's return being selected by one of the IRS's refund fraud filters because information on the return is inconsistent with IRS records. The National Taxpayer Advocate is hopeful that a 2022 IRS-planned research initiative to explore the types of information taxpayers want from the Where's My Refund? tool will yield beneficial information on how the tool can be modified to meet these needs. TAS is also encouraged that the IRS is exploring how to further utilize taxpayers' online accounts to provide more information regarding their tax information and the status of their returns or refunds. But these long-term enhancements must be coupled with immediate opportunities to provide taxpayers with more information now, such as providing more detailed and updated information on the IRS's Operational page. It is TAS's understanding that the IRS already possesses the necessary information to provide taxpayers with more specific and timely information regarding the processing of their returns and other important forms.

To be a transparent organization, the IRS must provide timely, clear, and accurate information that is easily accessible, and it must reevaluate the usefulness of IRS.gov to ensure it provides taxpayers the information they need in a user-friendly format. This includes removing duplication and inconsistencies while making enhancements, such as an improved search feature. Additionally, as the IRS moves forward with incorporating new features on its platforms, such as robochats that use AI, it needs to specify how AI data will be stored, safeguarded, and used. Failure to publicly state how it will protect this information may raise concerns for taxpayers, ultimately causing them to be reluctant to use these new services.

The IRS has encountered extraordinary challenges since the beginning of the pandemic. However, it needs to take steps to embrace proactive and timely transparency while ensuring it is providing taxpayers with clear and accurate information they can use to better understand their interactions with the IRS and how to comply with their tax obligations. The IRS mission statement says the IRS is to provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all. Transparency is key to fulfilling the IRS mission.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Create a filing season dashboard and provide weekly information on the filing season, including the total number of returns in inventory, number of returns beyond normal processing times, number of returns in suspense status, and the anticipated timeframes for working through them, while acknowledging that the situation is fluid and timeframes may change along with circumstances.
2. Improve Where's My Refund?, IRS2Go, or online accounts by providing taxpayers specific information about the cause of their refund delay and an estimated date when the IRS might issue their refund.
3. Revise math error notices to identify the exact adjustment the IRS is correcting and the time period for requesting abatement, all in the first paragraph of the notice, and include the date by which a taxpayer must request an abatement at the very top of the notice.
4. Send all math error notices to taxpayers by certified or registered mail.
5. Revise Letter 4464C to include more details about the items the IRS is reviewing and when the IRS will release the refund.
6. Include a roadmap feature on taxpayers' online accounts that will show where a taxpayer's return is in the tax administration process (*i.e.*, Collection or Exam).
7. When extending filing deadlines, ensure taxpayers have the option to e-file their returns.
8. Develop internal procedures for how the IRS will store, use, and safeguard data collected by AI-run programs and publicly provide this information on its website.

### Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 6213(b)(1) to require:
  - That all math error notices include an explanation of the specific error being alleged;
  - That all math error notices include a statement that the taxpayer has 60 days from the date of the notice to request that the summary assessment be abated; and
  - That all such notices will be sent either by certified or registered mail.

## Endnotes

- 1 See Ruijter, H.J.M. (Erna), *Proactive Transparency and Government Communication in the USA and the Netherlands* (2013).
- 2 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in TBOR are also codified in the IRC. See IRC § 7803(a)(3). It has been long recognized that transparency is fundamental to establishing a legitimate organization that holds the public's confidence and trust. Organisation for Economic Co-operation and Development, *Trust in Government*, <https://www.oecd.org/gov/trust-in-government.htm>. Congress has affirmed this core principle over the years, most notably by passing the Freedom of Information Act that applies to all federal agencies including the IRS. IRS, Privacy Disclosure, Freedom of Information Act, <https://www.irs.gov/privacy-disclosure/irs-freedom-of-information>. Years later, with the development of technology, particularly the internet, Congress reaffirmed its commitment to transparency by passing the Electronic Freedom of Information Act (eFOIA). H.R. 3802, *The Electronic Freedom of Information Act Amendments of 1996*, <https://www.congress.gov/bill/104th-congress/house-bill/3802>. With certain exceptions, both of these laws require that information be made available to the public. See National Taxpayer Advocate 2018 Annual Report to Congress 34-51 (Most Serious Problem: *Transparency of the Office of Chief Counsel: Counsel Is Keeping More of Its Analysis Secret, Just When Taxpayers Need Guidance More Than Ever*).
- 3 Data provided by Wage and Investment (W&I) on June 23, 2021 (on file with TAS). For a more detailed discussion about filing season delays, see National Taxpayer Advocate Fiscal Year 2022 Objectives Report to Congress 1-23 (*Review of the 2021 Filing Season*) and Most Serious Problem: *Filing Season Delays: Millions of Taxpayers Experienced Difficulties and Challenges in the 2021 Filing Season*, *infra*. See also Internal Revenue Manual (IRM) 3.12.2.1.1, Program Scope and Objectives (Nov. 27, 2020). ERS is the function that manually reviews returns for errors before the return posts to IRS systems. ERS is an online computer application used by tax examiners to correct errors identified on tax returns.
- 4 Data provided by W&I on June 23, 2021 (on file with TAS). Though taxpayers can submit amended returns electronically, like paper returns, they require an employee to input the data on the amended return into IRS systems, thereby significantly extending processing times. To address this backlog, the IRS revised the IRM to extend the time for processing amended returns from 16 weeks to 20 weeks. IRM 21.5.3.3.1, Locating Amended Returns (Form 1040-X) (June 22, 2021).
- 5 Accounts Management, CAF/TDC Daily Dashboard, Cycle Time (Oct. 2, 2021).
- 6 Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, § 2301, 134 Stat. 28, 347-51 (2020) (Employee Retention Credit for Employers Subject to Closure Due to COVID-19). Congress created the Employee Retention Credit that businesses could claim on Form 941X when meeting all specific eligibility requirements. This was designed to impact businesses affected by closures during the COVID-19 pandemic.
- 7 The Centralized Authorization File (CAF) units records and tracks Forms 2848. Taxpayers appoint representatives by completing and signing Form 2848 and giving it to their representatives who will mail, fax, or submit the form electronically to an IRS function or a CAF unit.
- 8 See IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited Dec. 17, 2021). This page addressed how long taxpayers may have to wait for Form 1040 return processing; the status of Form 941 processing; updates on submitting a missing form or document to the IRS; and Individual Taxpayer Identification Number application processing timeframes.
- 9 Most Serious Problem: *Correspondence Audits: Low-Income Taxpayers Encounter Communication Barriers That Hinder Audit Resolution, Leading to Increased Burdens and Downstream Consequences for Taxpayers, IRS, TAS, and the Tax Court*, *infra*.
- 10 See IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited Dec. 17, 2021).
- 11 See Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*, *supra*.
- 12 IRS response to TAS fact check (Dec. 9, 2021). The IRS2Go app provides refund status from Where's My Refund? – just in a mobile-friendly format.
- 13 See IRS, What to Expect for Refunds This Year, <https://www.irs.gov/refunds/what-to-expect-for-refunds-this-year> (last visited Dec. 17, 2021).
- 14 See National Taxpayer Advocate 2019 Annual Report to Congress 34 (Most Serious Problem: *Processing Delays: Refund Fraud Filters Continue to Delay Taxpayer Refunds for Legitimately Filed Returns, Potentially Causing Financial Hardship*).
- 15 IRC § 6213(b) and (g).
- 16 IRM 3.12.3-2, Taxpayer Notice Codes (Nov. 27, 2020). Math error authority was initially designed to allow the IRS to assess a tax liability by quickly resolving simple mathematical or clerical mistakes on a return. Congress granted the IRS the ability to make changes to a tax return for a limited number of situations, which is called math error authority. Unlike an examination where the IRS requests information from the taxpayer, the IRS makes a change to one or more line items on the tax return without involving the taxpayer. Initially, Congress reserved this authority for the simplest mathematical errors, such as 1+1=3. It later expanded the authority to include situations where the taxpayer made a clerical error (e.g., inconsistent entries on the face of the return), and this authority was expanded once again to include omissions of certain information like required Taxpayer Identification Numbers or Social Security numbers that don't match the ones in the Social Security Administration's database.
- 17 IRS Math Error for Recovery Rebate Credit (RRC) Cycle 45 (Nov. 11, 2021).
- 18 IRS Notice CP 11, Math Error on Return – Balance Due 3.
- 19 National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 143 (*IRS Responses to Administrative Recommendations Proposed in the National Taxpayer Advocate's 2019 Annual Report to Congress*). The IRS has revised its refund fraud notices, specifically the Letter 4464C, Initial Contact Notice, instructing taxpayers to review their returns to verify the income and withholding reported is accurate. More revisions are needed to provide taxpayers clearer and more concise information about why their refund is being held.
- 20 See Most Serious Problem: *Correspondence Audits: Low-Income Taxpayers Encounter Communication Barriers That Hinder Audit Resolution, Leading to Increased Burdens and Downstream Consequences for Taxpayers, IRS, TAS, and the Tax Court*, *infra*.
- 21 See National Taxpayer Advocate Interactive Taxpayer Roadmap, <https://www.taxpayeradvocate.irs.gov/get-help/roadmap/>.
- 22 IRS, 2021 Child Tax Credit and Advance Child Tax Credit payments – Topic F: Updating Your Child Tax Credit Information During 2021 (rev. June 24, 2021), <https://www.irs.gov/credits-deductions/2021-child-tax-credit-and-advance-child-tax-credit-payments-topic-f-updating-your-child-tax-credit-information-during-2021>.
- 23 IRS response to TAS fact check (Dec. 9, 2021). The IRS has since updated this FAQ and provided more clarification.



## Most Serious Problem #4: Transparency and Clarity

- 24 See IRS, IR-2021-230, All of Mississippi Now Qualifies for Expanded Hurricane Ida Relief; Sept. 15, Oct. 15 Deadlines, Other Dates Extended to Jan. 3 (Nov. 17, 2021), <https://www.irs.gov/newsroom/irs-all-of-mississippi-now-qualifies-for-expanded-hurricane-ida-relief-sept-15-oct-15-deadlines-other-dates-extended-to-jan-3>.
- 25 IRS QuickAlerts for Tax Professionals, 1040 Modernized e-File (MeF) Production Shutdown (Nov. 3, 2021) (advising “Shutdown begins on Saturday, November 20, 2021, at 11:59 p.m. Eastern time, to prepare the system for the upcoming Tax Year 2021 Filing Season.”). On December 22, 2021, the IRS again postponed the date to February 15, 2022, to accommodate electronic filings. See IRS, IR-2021-254: Hurricane Ida Tax Relief Extended to February 15 for Part or All of Six Qualifying States, <https://www.irs.gov/newsroom/hurricane-ida-tax-relief-extended-to-february-15-for-part-or-all-of-six-qualifying-states> (last visited Dec. 31, 2021).
- 26 See Erin Collins, The IRS and Private Collection Agencies: Four Contracts Lapsed and Three New Ones Are in Place: What Does That Mean for Taxpayers?, NATIONAL TAXPAYER ADVOCATE BLOG (Oct. 14, 2021), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-the-irs-and-private-collection-agencies/>; Erin Collins, Four Contracts Lapsed and Three New Ones Are in Place: What Does That Mean for Taxpayers? Part II: Help Is on the Way for Taxpayers Whose Payment Arrangements With Private Collection Agencies Were Terminated, NATIONAL TAXPAYER ADVOCATE BLOG (Nov. 3, 2021), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-private-collection-agencies-part-2/>.
- 27 IRS response to TAS fact check (Dec. 9, 2021).
- 28 CARES Act, Pub. L. No. 116-136, § 2201, 134 Stat. 281, 335-40 (2020) (adding IRC § 6248, 2020 Recovery Rebates for Individuals).
- 29 As a result of litigation (*Scholl v. Mnuchin, et al.*, 494 F. Supp. 3d 661 (N.D. Cal. 2020)), the IRS later revised its guidance instructing incarcerated individuals not to return their EIPs. See IRS, Questions and Answers About the Second Economic Impact Payment, <https://www.irs.gov/coronavirus/second-eip-faqs/> (last visited Dec. 17, 2021).
- 30 IRS, Returning an Economic Impact Payment, <https://www.irs.gov/newsroom/returning-an-economic-impact-payment> (last visited Dec. 17, 2021).
- 31 The IRS’s conclusion regarding incarcerated taxpayers was challenged in *Scholl v. Mnuchin, et al.*, 494 F. Supp. 3d 661 (N.D. Cal. 2020). The judge entered a permanent injunction stopping the government misconduct, ruling that the policy of excluding incarcerated people from stimulus benefits was “arbitrary and capricious.”
- 32 IRS response to TAS information request (Nov. 15, 2021). At the beginning of FY 2022, there were 30,351 published pages on IRS.gov. This number will vary over time for a number of reasons, including new pages added as a result of changes in tax policy and legislative programs. Also, existing pages will be unpublished when content ages out, when redundant information is consolidated, or when low-usage material is removed during routine site cleanup.
- 33 *Consumer Technographics, Digital Experience and Engagement with Government Agencies*, Forrester Research 7 (June 2018). When asked if IRS.gov is easily searchable, 12 percent of Millennials agreed, 17 percent of Generation Xers agreed, and 11 percent of Baby Boomers agreed. See also IRS response to TAS fact check (Dec. 9, 2021); National Taxpayer Advocate 2018 Annual Report to Congress 60 (Most Serious Problem: *Navigating the IRS: Taxpayers Have Difficulty Navigating the IRS, Reaching the Right Personnel to Resolve Their Tax Issues, and Holding IRS Employees Accountable*). Despite these improvements, some of the overarching problems identified in the Forrester report remain. Regarding the IRS.gov search engine, the IRS has plans to update it by the end of CY 2021.
- 34 See, e.g., Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019).
- 35 IRS, Taxpayer First Act Annual Report to Congress 47 (Jan. 2021).
- 36 *Id.*
- 37 *Id.* at 46.
- 38 Maya Benari, *Building a Large-Scale Design System for the U.S. Government (Case Study)*, SMASHING MAGAZINE (Oct. 9, 2017), <https://www.smashingmagazine.com/2017/10/large-scale-design-system-us-government/>.
- 39 In the simplest terms, this technology collects and analyzes data and makes decisions that humans would normally make. See Admin. Conf. of the U.S. (ACUS), Statement #20, Agency Use of Artificial Intelligence, Adopted December 16, 2020, <https://www.acus.gov/sites/default/files/documents/Statement%20%20Agency%20Use%20of%20Artificial%20Intelligence.pdf>. See, e.g., ACUS, Statement #20, Agency Use of Artificial Intelligence, 86 Fed. Reg. 6616 (Jan. 22, 2021).
- 40 See ACUS, Statement #20, Agency Use of Artificial Intelligence, Adopted December 16, 2020, <https://www.acus.gov/sites/default/files/documents/Statement%20%20Agency%20Use%20of%20Artificial%20Intelligence.pdf>. See, e.g., ACUS, Statement #20, Agency Use of Artificial Intelligence, 86 Fed. Reg. 6616 (Jan. 22, 2021).
- 41 *Id.*

## FILING SEASON DELAYS: Millions of Taxpayers Experienced Difficulties and Challenges in the 2021 Filing Season

### WHY THIS IS A PROBLEM FOR TAXPAYERS

This past filing season left millions of taxpayers confused and frustrated. It was one of the worst filing seasons experienced by tens of millions of taxpayers. Millions did not receive refunds timely or updates and adequate information regarding their delays, and it was extremely difficult to reach a customer service representative on the toll-free lines.

For many taxpayers and their families, refunds provide financial stability for the entire year. As such, the IRS and its operations are prominently featured in the national spotlight. For the 2021 filing season, the COVID-19 pandemic illuminated serious problems with the IRS's reliance on antiquated systems and processes, which stymied tax administration and produced historically low Levels of Service. On May 17, 2021, the postponed filing season due date, over 35 million returns were awaiting manual processing causing refund delays and taxpayer confusion.<sup>1</sup> At the end of the filing extension period, October 16, 2021, there were approximately 13 million original filed returns awaiting manual processing and over 2.7 million amended returns still awaiting processing.<sup>2</sup> This filing season caused confusion and frustration, infringed on taxpayer rights, and eroded taxpayer trust and confidence in our tax system.

### EXPLANATION OF THE PROBLEM

The IRS has many responsibilities during filing season, of which some of the most important are processing tax returns, issuing refunds, and communicating with taxpayers. The 2021 filing season was the textbook perfect storm. The COVID-19 pandemic was the catalyst that fueled the perfect storm that challenged tens of millions of anxious and sometimes desperate taxpayers attempting to meet their tax filing and payment obligations and the IRS and its workforce attempting to deliver tax information, provide service, and issue refunds during an unprecedented filing season. Pandemic relief legislation added auxiliary responsibilities to the IRS's workload, such as reconciling inconsistencies in millions of Economic Impact Payments (EIPs) and delivering a third round of EIPs about a month into the 2021 filing season.<sup>3</sup> Further legislation adjusted the tax treatment of unemployment compensation for eligible taxpayers after the 2021 filing season began, requiring the IRS to adjust the tax returns of any qualified taxpayer who had already filed a tax return, adding more chaos to the filing season.<sup>4</sup>

Any of these added challenges alone would have disrupted effective tax administration, but combined, they proved a major obstruction to the IRS's ability to carry out its mission<sup>5</sup> and left many taxpayers waiting for refunds, irritated and unable to get help. These challenges were compounded as the IRS was forced to close or understaff facilities across the country to comply with local stay-at-home orders and social distancing guidelines, which reduced its efficiency and staff. The IRS adopted an agencywide posture that extended telework options to most employees or operated within the constraints of safety procedures and protocols to protect employees, their families, and our local communities, resulting in multiple challenges for the processing of returns and correspondence.

The perfect storm strained the IRS's customer service performance and its operations, which created multiple problems for taxpayers, many of whom were living through financial hardships and uncertainty from

significant delays in receiving their refunds. Delays in securing refunds and lack of response to taxpayer correspondence drove taxpayers to call the IRS phone lines in historic volumes to obtain meaningful, basic information about their tax matters, which overwhelmed the IRS's capacity.<sup>6</sup> Predictably, when taxpayers could not reach the IRS, many contacted their members of Congress or TAS for assistance.

Some challenges impacting the 2021 filing season included:

- Implementation of COVID-19 pandemic safety measures and continuity of operations during the national emergency;
- Substantial inventory backlog carried over from the 2020 filing season;<sup>7</sup>
- The timing and effects of implementing recent tax law changes;
- Reliance on and utilization of antiquated systems and processes;
- Lack of timely processing and responses to taxpayer correspondence; and
- Increased taxpayer demand and need upon already subpar services, antiquated processes, and limited employee resources.

## ANALYSIS

### Implementation of Safety Measures and Operational Continuity Proved Difficult

Throughout the pandemic, the IRS followed the Centers for Disease Control and Prevention guidance for recommended cleaning and disinfection of facilities after an employee in an IRS facility tested positive for COVID-19.<sup>8</sup> This meant a COVID-19 positive occurrence at a facility temporarily closed the impacted workspace, and in effect, caused delays for taxpayers. Agency operations and staffing already remained at reduced capacity due to protective social distancing measures taken to safeguard the health and safety of taxpayers, employees, and their families due to the pandemic. Some critical tasks of the IRS could not be accomplished via telework, which contributed to processing backlogs and significant refund delays for many taxpayers and families who rely on timely refunds for financial security.

### Effects of the 2020 Filing Season Lingered Into the 2021 Filing Season

The IRS started the 2021 filing season with a backlog of work from the 2020 filing season. Entering the 2021 filing season, the IRS still had not processed a backlog of paper tax returns and taxpayer correspondence received in the 2020 filing season.<sup>9</sup> At the end of the 2020 calendar year, the IRS estimated that it had more than 11.7 million paper-filed individual and business returns it still needed to manually process, which took the IRS until June 2021 to process.<sup>10</sup> Manual-intensive processes, such as processing paper-filed tax returns, are an inefficient use of limited IRS resources and cause delays for taxpayers. In contrast, implementing technology such as 2-D barcoding would allow the IRS to scan paper tax returns prepared with software, resulting in a more efficient use of IRS resources and fewer delays for taxpayers.<sup>11</sup> The National Taxpayer Advocate expects similar challenges with the carryover of 2021 filing season backlogs into the 2022 filing season and anticipates delays in the processing and payment of refunds for the upcoming filing season.

### Several Tax Law Changes Complicated the 2021 Filing Season

Congress passed four acts during the previous two filing seasons with tax provisions designed to aid taxpayers struggling under the impact of the COVID-19 pandemic, tasking the IRS to administer crucial relief programs for Americans.<sup>12</sup> The aggregate of these tax law changes added auxiliary responsibilities to the IRS's workload and left taxpayers trying to figure out whether these changes applied to their reporting requirements. Congress enacted legislation during the height of the 2020 filing season and again on the eve of the 2021 filing season, in addition to legislation enacted during the 2021 filing season. The initial legislation required the distribution of the first of three rounds of EIPs.<sup>13</sup> Latter legislation provided for a second round of EIPs as well as other tax relief provisions.<sup>14</sup> Following the latter law's enactment, the IRS delayed the traditional filing season start date about two weeks later than it typically begins.<sup>15</sup> Delaying the start provided the IRS a small

window of time to try to quickly implement key programming and testing of its archaic systems to comply with the law.<sup>16</sup>

**FIGURE 2.5.1<sup>17</sup>**

### Important Dates That Impacted the 2021 Filing Season

March 18, 2020	Enactment of the Families First Coronavirus Response Act of 2020.
March 27, 2020	Enactment of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020. The IRS began distributing the first round of Economic Impact Payments.
July 15, 2020	The IRS postponed end date of the 2020 filing season.
December 27, 2020	Enactment of Consolidated Appropriations Act, 2021 (including the COVID-Related Tax Relief Act of 2020 and the Coronavirus Response and Relief Supplemental Appropriations Act of 2021).
December 29, 2020	The IRS began distributing the second round of Economic Impact Payments.
February 12, 2021	The 2021 filing season began.
March 11, 2021	Enactment of the American Rescue Plan Act (ARPA) of 2021.
March 12, 2021	The IRS began distributing the third round of Economic Impact Payments.
March 17, 2021	Treasury and the IRS announced the postponement of the deadline for individual taxpayers to file Form 1040 and pay federal income tax from April 15, 2021, to May 17, 2021.
May 17, 2021	Postponed tax filing and payment deadline for individuals.
October 15, 2021	Deadline to file 2020 tax returns for taxpayers who requested an extension.

### ***Tax Law Changes Enacted During the 2021 Filing Season***

Passed mid-filing season, the American Rescue Plan Act (ARPA) altered several tax provisions, which included the exclusion of certain unemployment compensation for qualified taxpayers from taxation and eliminated excess Advance Premium Tax Credit (APTC) repayments.<sup>18</sup> However, by the time of the law's enactment, the IRS had received nearly half of all 2020 individual income tax return filings, including the returns of many taxpayers who had filed and reported taxes owed on their unemployment compensation.<sup>19</sup> The legislative changes took their toll on the IRS's already strained information technology resources. Fortunately, the IRS implemented systemic solutions to rectify some issues, such as automatically recomputing deficiencies or refunds and adjusting affected credits such as the Earned Income Tax Credit (EITC) and Additional Child Tax Credit (ACTC) for impacted taxpayers.<sup>20</sup> Systemic solutions were beneficial because they removed the burden from taxpayers to file amended returns and from the IRS to process millions of amended returns before issuing refunds.

But the systemic solutions did not resolve all issues for taxpayers. For example, except for the childless worker EITC, the IRS did not elect any credits for which taxpayers would become eligible based on the recomputed amount after exclusion of the unemployment benefits.<sup>21</sup> It also did not calculate for now-eligible taxpayers with qualifying children any other federal credits or deductions not claimed on original tax returns.<sup>22</sup> Therefore, taxpayers who became eligible for credits or deductions after the exclusion computation were burdened with filing amended returns and often having to wait through long processing delays to receive correct refunds.

***The IRS Distributed the Third Round of Economic Impact Payments During the Filing Season***

ARPA likewise tasked the IRS to deliver a third round of EIPs about a month into the 2021 filing season. Eligibility for the third round of EIPs was based on either the taxpayer's 2019 or 2020 tax return, whichever the IRS had on file. The timing of the law's enactment, combined with processing delays, meant some third round EIPs were calculated using the 2019 tax return instead of 2020 information. This caused taxpayers to receive less than they were entitled to had the IRS processed their 2020 tax returns; the IRS then had to recalculate eligibility and issue a "plus up payment" after 2020 tax returns were processed.<sup>23</sup> Meanwhile, previously ineligible taxpayers who became eligible for the third round of EIPs based on their 2020 tax returns could not receive the EIP until the IRS completed processing their tax returns. In both circumstances, many financially distressed taxpayers often endured lengthy waits for the IRS to process their 2020 tax returns to receive the third payment.

***The IRS Issued Monthly Advance Child Tax Credit Payments***

Timely processing of 2020 tax returns also affected the Child Tax Credit (CTC). ARPA authorized the IRS to issue monthly Advance Child Tax Credit (AdvCTC) payments to eligible taxpayers with qualifying children.<sup>24</sup>

Key changes to CTC under ARPA include:<sup>25</sup>

- Making CTC fully refundable;
- Increasing the eligibility for qualifying children to age 17;
- Increasing the maximum credit from \$2,000 to \$3,000 for children between six and 17, and to \$3,600 for children below age six; and
- Authorizing advanced monthly payments to taxpayers with qualifying children not to exceed 50 percent of the 2021 CTC amount.

The IRS began issuing AdvCTC payments to eligible taxpayers on July 15, 2021, and developed online resources to help taxpayers try to navigate the complex and confusing new information.<sup>26</sup> Like the third round of EIPs, the law authorized the IRS to determine CTC eligibility using the 2019 tax return information it had on file. The IRS automatically adjusted AdvCTC payments that may increase or decrease a taxpayer's AdvCTC monthly amount after the IRS processed their 2020 tax returns or upon request by the taxpayer using the online portal.

Similar to the Recovery Rebate Credit (RRC) reconciliation process for 2020 tax returns, taxpayers will have to reconcile the third EIP and the AdvCTC payments by filing Schedule 8812 with their 2021 tax returns.<sup>27</sup> Errors and inconsistencies appeared when taxpayers reconciled the RRC in the 2021 filing season, which caused lengthy processing delays. Reconciliation errors of the third EIP and AdvCTC will negatively affect the 2022 filing season, and every effort must be made to assist and educate taxpayers about what they can do to correctly reconcile these amounts with the filing of their returns.

***Antiquated Systems and Processes: Over 35 Million Tax Returns Required Manual Review and Processing***

Generally, when IRS systems identify a tax return with errors or inconsistencies, the tax return detours from the processing roadmap to the IRS Submission Processing Division's Error Resolution System (ERS).<sup>28</sup> There, the IRS suspends processing to make corrections. Because of the numerous tax law changes and limitations to IRS's scanning capabilities for tax returns in ERS, errors recognized in the 2021 filing season had to be manually processed; they were not correctable through automation. Unlike prior years, the magnitude of these errors requiring manual review was an enormous task and had to be performed by non-teleworking employees in an IRS facility. This cause and effect magnified the problems of the IRS's reliance on antiquated systems and manual processes and highlighted operational shortcomings during the pandemic emergency.<sup>29</sup>

Tax returns that go into ERS form a queue of workable inventory, each awaiting manual review and correction by a tax examiner on a first-in, first-out basis.<sup>30</sup> When ERS inventory reaches maximum capacity, as it did during the 2021 filing season, tax returns that do not make it into the queue of workable inventory go into a separate holding queue, where each then waits to make it into the workable inventory queue.<sup>31</sup> The average timeframe a tax return was held in the holding queue during the 2021 processing year was 75 days, an over two-month wait before it even reached the workable inventory queue for manual review to continue processing.<sup>32</sup>

Processing times for tax returns and taxpayer correspondence matter greatly because the vast majority of taxpayers overpay their tax and are entitled to refunds.<sup>33</sup> During processing year 2021, almost 22 million tax returns waited in the holding queue.<sup>34</sup> In comparison, the 2019 and 2020 processing years had about a half million and about eight million tax returns that went into the holding queue, respectively.<sup>35</sup> For many affected taxpayers, delays in processing and refund payments meant necessary living expenses such as rent or utilities went unpaid for several months. The IRS needs to perform a postmortem analysis to determine ERS efficiencies and challenges in preparation of the upcoming filing season, as many of the similar challenges are expected to occur next filing season, resulting in long delays for taxpayers.

### ***Millions of Recovery Rebate Credit Inaccuracies Caused Manual Reviews and Delays***

Despite the mostly successful first two campaigns where the majority of eligible taxpayers received their EIPs promptly, approximately eight million potentially eligible taxpayers did not timely receive first or second EIPs.<sup>36</sup> Taxpayers who did not receive the first or second round of EIPs or who received an inaccurate amount attempted to accurately reconcile the missing funds by claiming the RRC on their 2020 tax returns.<sup>37</sup> When the claimed RRC was inaccurately reconciled and contradictory to IRS records, the IRS required manual review to fix it. At the close of the 2021 filing season, more than five million returns were identified as having inconsistent RRC amounts compared to IRS records.<sup>38</sup> Almost four months after the end of the 2021 filing season, over 11 million returns were identified as having RRC inconsistencies.<sup>39</sup> There is a need for automated ERS solutions to prevent the extensive and harmful delays taxpayers suffered having to wait through antiquated processes.

### ***“Lookback Rule” for the Earned Income Tax Credit and Additional Child Tax Credit Caused Manual Reviews and Delays***

The Taxpayer Certainty and Disaster Tax Relief Act of 2020 in the Consolidated Appropriations Act, 2021, and ARPA also created the 2019 “Lookback Rule” provisions for EITC and ACTC. The provisions provided temporary relief for taxpayers who earned less income in 2020 than 2019 by allowing them to use their 2019 earned income to calculate EITC and the refundable ACTC for more advantageous credits.<sup>40</sup> Whereas the lookback rule benefitted taxpayers whose earned income decreased during the pandemic, financially strained taxpayers who elected to look back often experienced significant waits receiving their much-needed refunds due to tax return processing delays. Although these legislative changes provided much-needed relief for millions of taxpayers, they resulted in millions of manual reviews. With the lack of sufficient preparation time, the IRS could not develop an automated way to systemically verify 2019 earnings for taxpayers who elected to look back and use their 2019 earned income for a more advantageous EITC or ACTC. Once again, it required a manual process.

At the conclusion of the 2021 filing season, over 35 million tax returns required manual processing by an IRS employee – a nearly five-fold increase from the 7.4 million unprocessed returns at the end of the 2019 filing season.<sup>41</sup> The daunting sum was comprised of 16.8 million paper tax returns waiting to be processed; about 15.8 million returns suspended in ERS during processing because of errors; and about 2.7 million amended returns awaiting processing. Over four months after the close of the filing season, the IRS was still processing approximately 13 million individual and business tax returns received during the 2021 filing season.<sup>42</sup>



**FIGURE 2.5.2, Snapshot Status of Inventory Requiring Manual Processing (2019 to 2021) as of the Close of 2021 Filing Season on May 17, 2021<sup>43</sup>**

Year	Description	Individual	Business	Not Specified	Total	Comparison to Prior Year
2019	<b>Paper Returns Awaiting Processing</b>					
	Calendar Year 2019	1,600,000	1,500,000	-	3,200,000	
	<b>Total Paper Returns Awaiting Processing</b>	<b>1,600,000</b>	<b>1,500,000</b>	<b>-</b>	<b>3,200,000</b>	
	<b>Paper and Electronic Returns – Processing Suspended</b>					
	Error Resolution Cases	1,000,000	-	-	1,000,000	
	Processing Rejects	1,000,000	100,000	-	1,100,000	
	Unpostable Returns	200,000	300,000	-	500,000	
	Suspected Identity Theft	800,000	-	-	800,000	
	<b>Total Processing Suspended Returns</b>	<b>3,000,000</b>	<b>500,000</b>	<b>-</b>	<b>3,500,000</b>	
	<b>Unprocessed Amended Returns</b>	<b>700,000</b>	<b>-</b>	<b>-</b>	<b>700,000</b>	
	<b>Total Unprocessed Returns - 2019 Filing Season</b>	<b>5,300,000</b>	<b>2,000,000</b>	<b>-</b>	<b>7,400,000</b>	
2020	<b>Paper Returns Awaiting Processing</b>					
	Calendar Year 2020	3,400,000	1,000,000	-	4,300,000	
	<b>Total Paper Returns Awaiting Processing</b>	<b>3,400,000</b>	<b>1,000,000</b>	<b>-</b>	<b>4,300,000</b>	<b>34%</b>
	<b>Paper and Electronic Returns – Processing Suspended</b>					
	Error Resolution Cases	1,400,000	200,000	-	1,600,000	60%
	Processing Rejects	1,600,000	200,000	-	1,800,000	64%
	Unpostable Returns	800,000	500,000	-	1,300,000	160%
	Suspected Identity Theft	1,100,000	-	-	1,100,000	38%
	<b>Total Processing Suspended Returns</b>	<b>4,900,000</b>	<b>900,000</b>	<b>-</b>	<b>5,800,000</b>	<b>66%</b>
	<b>Unprocessed Amended Returns</b>	<b>600,000</b>			<b>600,000</b>	<b>-14%</b>
	<b>Total Unprocessed Returns - 2020 Filing Season</b>	<b>8,900,000</b>	<b>1,900,000</b>		<b>10,700,000</b>	<b>45%</b>
2021	<b>Paper Returns Awaiting Processing</b>					
	Calendar Year 2020	100,000	1,000,000	-	1,100,000	
	Calendar Year 2021	6,000,000	4,600,000	5,100,000	15,700,000	
	<b>Total Paper Returns Awaiting Processing</b>	<b>6,100,000</b>	<b>5,600,000</b>	<b>5,100,000</b>	<b>16,800,000</b>	<b>291%</b>
	<b>Paper and Electronic Returns – Processing Suspended</b>					
	Error Resolution Cases	9,800,000	500,000	-	10,300,000	544%
	Processing Rejects	1,200,000	200,000	-	1,400,000	-22%
	Unpostable Returns	1,100,000	900,000	-	2,000,000	54%
	Suspected Identity Theft	2,100,000	-	-	2,100,000	91%
	<b>Total Processing Suspended Returns</b>	<b>14,200,000</b>	<b>1,600,000</b>	<b>-</b>	<b>15,800,000</b>	<b>172%</b>
	<b>Unprocessed Amended Returns</b>	<b>2,700,000</b>			<b>2,700,000</b>	<b>350%</b>
	<b>Total Unprocessed Returns - 2021 Filing Season</b>	<b>23,000,000</b>	<b>7,200,000</b>	<b>5,100,000</b>	<b>35,300,000</b>	<b>230%</b>

### **Lack of Timely Processing and Response to Taxpayer Correspondence**

The IRS still relies on the mail via the U.S. Postal Service as its primary method of corresponding with taxpayers and has labored to timely process incoming and outgoing mail. Often, the resolution of taxpayer issues depends on how quickly and accurately taxpayers respond and how quickly the IRS can open the mail and complete the processing of taxpayer correspondence. The IRS COVID-19 Operations website states that it is opening mail within normal timeframes in order of date received and that processing time is taking longer than usual because of social distancing guidelines and resource restrictions, including employees.<sup>44</sup>

### ***Taxpayers Continue to Experience Subsequent Notices and Collection Action Resulting From IRS Processing Correspondence Delays Addressing the Merits of the Issue***

The delays in processing mail continue to harm taxpayers and have caused the IRS to treat many taxpayers who timely responded to IRS notices or filed an amended return to resolve an issue as if they did not. Despite taxpayers mailing timely responses or filing amended returns, the IRS, unaware taxpayers have acted, still proceeds to send subsequent letters or notices, including collection notices. For taxpayers who have done their due diligence but have not had their correspondence timely processed or considered due to mail processing delays, having the IRS continue to pursue compliance and collection activity is beyond confusing, frustrating, and concerning.

Because taxpayers can only control when they send responses or filings and not the time it takes for the IRS to process and actually consider the merits of their responses, it is patently unfair to taxpayers for the IRS to proceed with any form of collection activity. Taxpayer rights include *to pay no more than the correct amount of tax, to challenge the IRS's position and be heard, and to a fair and just tax system*, all of which are jeopardized when the IRS is delayed in processing correspondence.<sup>45</sup> To protect taxpayer rights and better serve taxpayers, the National Taxpayer Advocate recommends that the IRS should freeze related compliance and collection activity until it addresses and considers taxpayer correspondence or responds to the merits. A reasonable goal is to have all correspondence replying to notices resolved or the merits responded to within 45 days of receipt. In circumstances when any of the IRS workstreams cannot hit the 45-day goal, the IRS should take appropriate steps to ensure that no related compliance or collection actions are taken until taxpayer positions can be fairly and properly considered.

### ***IRS Correspondence Often Lacks Clarity and Omits Crucial Information Taxpayers Need and Have the Right to Receive***

The taxpayer's *right to be informed* through clear and informative written communications from the IRS is critical to help resolve questions and limit the need for phone contact.<sup>46</sup> Providing understandable notices that contain clear explanations helps taxpayers gain a full understanding of the process and recognizes their *right to be informed*.<sup>47</sup> Too often, the IRS sends notices to taxpayers that are not structured with a taxpayer rights focus and fall short of what taxpayers should expect and deserve, generating more questions and more calls.

### **Increased Taxpayer Demand and Need Strained Already Subpar IRS Services, Antiquated Processes, and Limited Employee Resources**

#### ***Inadequate Information Available to Taxpayers Online***

The use of technology to engage in business services online is widespread and common.<sup>48</sup> Taxpayers expect similar capabilities and quality regarding online services with the IRS. Taxpayers experiencing extensive refund delays, which in some cases extended over a year in duration and caused serious financial hardships, often sought out the IRS's online self-service resources to check their refund status. During the 2021 filing season, taxpayers accessed the IRS online information portal hundreds of millions of times to determine the status of their refund.<sup>49</sup> The IRS's Where's My Refund? tool and IRS2Go mobile app provide useful information to taxpayers when normal processes run smoothly.<sup>50</sup>

However, for tens of millions of taxpayers who experienced processing delays in the 2021 filing season, the limitations of the IRS's online offerings were amplified. Taxpayers seeking answers specific to their accounts quickly discovered a digital environment with only scarce information. Neither the tool nor the app provides taxpayers specifics as to what is causing their particular delay or when they may receive their refunds.<sup>51</sup>

### ***Already Insufficient Levels of IRS Phone Service Dipped to Historic Low***

Phone communication with the IRS on its primary phone lines was difficult for taxpayers before the pandemic.<sup>52</sup> When the pandemic began, the IRS was forced to close offices, leaving assistors unequipped for telework and unable to serve taxpayers.<sup>53</sup> Already afflicted by understaffing, the IRS's primary phone lines operated immensely understaffed or sometimes were not operational. During the 2021 filing season, the IRS received 171 million phone calls and at its lowest Level of Service taxpayers connected with the IRS only nine percent of the time.<sup>54</sup>

The timing of COVID-19 relief legislation and significant delays in processing tax returns and taxpayer correspondence caused many phone calls to the IRS. The 2021 filing season saw taxpayers desperate for even basic information regarding the status of refunds or reasons for delays not attainable online contacting the IRS by phone in record numbers. The IRS reported getting five times its normal call volume during the first six months of 2021, receiving over 1,500 calls per second at its apex.<sup>55</sup>

**The 2021 filing season saw taxpayers desperate for even basic information regarding the status of refunds or reasons for delays not attainable online contacting the IRS by phone in record numbers. The IRS reported getting five times its normal call volume during the first six months of 2021, receiving over 1,500 calls per second at its apex.**

### ***IRS Challenges Caused the TAS Safety Net to Become Overstretched***

Factors such as low Level of Service, insufficient information available online, and often confusing notices propelled high volumes of taxpayers to seek help from TAS or their elected representatives in Congress.<sup>56</sup> Frequently, Congress relies on TAS to provide advocacy to help their constituents.<sup>57</sup> Taxpayers also experienced delays receiving TAS help during the 2021 filing season.<sup>58</sup>

Congress created TAS to be the voice of the taxpayer, to protect taxpayer rights, to recommend improvements to tax administration, and to operate as the safety net to support taxpayers falling through the cracks of bureaucracy.<sup>59</sup> TAS was established to assist taxpayers facing hardship and experiencing systemic issues with the IRS – not to be the IRS.<sup>60</sup> As the IRS struggled with a multitude of challenges in the 2021 filing season, many taxpayers sought assistance from TAS. Although TAS is an independent agency, it rarely has the delegated authority to take certain actions to directly resolve taxpayer issues. Rather, TAS serves an ombudsman function, providing advocacy within the IRS on behalf of taxpayers for necessary actions to resolve problems.

TAS inherently relies on IRS employees' delegated authority to take the actions needed to resolve problems for which TAS advocates on behalf of taxpayers. The impact of the IRS's challenges directly affected TAS operations and its ability to provide prompt advocacy in working with IRS counterparts to resolve taxpayer issues. TAS experienced dramatically increased workloads of cases involving financially distressed taxpayers seeking advocacy and others unable to reach the IRS to ask questions or gain clarity about their tax matters.<sup>61</sup>

In 2021, TAS could not assist taxpayers when the IRS did not have a system in place in which TAS could advocate for a fix. This resulted in TAS not accepting cases where taxpayers desperately needed assistance.

## CONCLUSION AND RECOMMENDATIONS

The IRS had several preexisting problems ranging from archaic systems to an insufficient Level of Service that weakened taxpayer service and rights before the pandemic hit. While the 2021 filing season was the textbook perfect storm, it is one that the IRS can analyze and study to implement changes to improve future filing seasons. The problems discussed must be rectified for taxpayers to receive the quality service they deserve and to safeguard their rights under the law.

### Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Utilize 2-D barcoding and/or optical character recognition technology to improve the accuracy and efficiency of processing of paper tax returns.<sup>62</sup>
2. Set a goal of having all correspondence replying to notices resolved or the merits responded to within 45 days of receipt. When the IRS falls short of hitting this target in any of its workstreams, it should ensure that no related compliance or collection actions are taken until the IRS has fairly considered and responded to the merits of the taxpayer's position stated in their correspondence.
3. Implement and increase callback technology capacity across all taxpayer-facing telephone lines.<sup>63</sup>
4. Develop a dedicated automated phone line where taxpayers can enter their information and upon proper identity authentication, may retrieve specific details about their tax accounts, including but not limited to the amount of AdvCTC and EIPs received.
5. Accelerate permanent implementation allowing for the use of e-signatures and secure email of documents by end of fiscal year 2022.<sup>64</sup>
6. Conduct a postmortem 2021 filing season review of ERS delays to identify potential reasons for the extended delays.
7. Program systemic reconciliation capabilities for refundable credits such as the RRC, ACTC, CTC, and systemic lookback capabilities to prior year modified adjusted gross income (AGI) where a taxpayer claims eligibility for tax credits that are based on prior year AGI, such as the EITC lookback rule, and any future tax benefits of similar nature and impact that have potential to delay tax return processing and eliminate the need for manual reviews for computational adjustments.
8. Create a filing season dashboard and provide detailed weekly information on the filing season, including the total amount of return inventory, number of returns beyond normal processing times, number of returns in suspense status, and the anticipated timeframes for working through them, while acknowledging that the situation is fluid and timeframes may change along with circumstances.<sup>65</sup>

### Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide dedicated multiyear funding sufficient to allow the IRS to improve customer experience in general and specifically to improve and add functionality to its online and telephone service, as described in the Taxpayer First Act Report to Congress.<sup>66</sup>

## RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division, and Chief Taxpayer Experience Officer  
Darren Guillot, Commissioner, Collection and Operations Support, Small Business/Self-Employed Division

## IRS COMMENTS

During the COVID-19 pandemic, we have had to find a new way to fulfill our mission, while experiencing extraordinary circumstances related to the pandemic. We understand the importance of timely processing tax returns and refunds, as well as providing quality service to taxpayers needing in person and telephone assistance.

We continue to work diligently to process as many returns as possible before the 2022 filing season. As we get closer to the start of filing season, we will ensure our communications and information on IRS.gov answers taxpayer questions concerning any existing unprocessed returns and alleviates any burden caused by delays to the extent possible. Taxpayers can review the Frequently Asked Questions for additional information and visit our Status of Operations page for ongoing updates, including updated amended return processing timeframes.

The IRS contacts a significant number of taxpayers to perfect returns during the filing process, resolve issues identified in post-filing, and secure delinquent returns. Traditionally, we primarily contact taxpayers through mail, phone, or personal interviews; however, we are always seeking new ways to communicate that will reduce taxpayer burden and improve organizational efficiency. The primary causes for return processing delays are mistakes, such as Recovery Rebate Credit (RRC) errors and missing information, as well as reviews for potential identity theft or fraud. We attempt to resolve these cases without contact with the taxpayer where possible, but manual reviews still take time. If we need more information or if we need to verify a taxpayer's identity, we will communicate by letter. When correspondence is necessary, taxpayer response time and potential mail delays affect the process. Additionally, while we can resolve some matters through the initial taxpayer response, other matters require further follow-up. In some cases, this work could take 90 to 120 days or even longer depending on the information required.

We will continue our hiring efforts throughout the year, to the extent funding permits and eligible prospects accept job offers, to staff up our processing centers to work through our inventory. Our external hiring selections are underway for customer service representatives, tax examiners, and clerks to help support the 2022 tax filing season.

To assist taxpayers looking for assistance with filing returns, we developed a strategy to assist Volunteer Income Tax Assistance (VITA)/Tax Counseling for the Elderly (TCE) partners in delivering free tax preparation services using multifaceted approaches which will be continued into FY 2022. Additionally, we will provide Over the Phone Interpreter Service capabilities at all VITA locations during this filing season.

We continue to look for new and innovative ways to deliver current services, as well as provide new taxpayer services. Pending funding approval, during Fiscal Year (FY) 2022 the IRS will expand e-file capabilities for Form 1040-X, Amended U.S. Individual Income Tax Return, by allowing e-filing of amendments for non-electronic original returns and offering e-filing of Form 1040-X for all 1040-family returns. We have also expanded the Customer Call-back option to 16 additional applications to save taxpayers direct wait time while waiting to speak to an assistor.

## TAXPAYER ADVOCATE SERVICE COMMENTS

While the IRS faced significant challenges that impacted the 2021 filing season, so did taxpayers. The IRS needs to prioritize the expeditious processing of tax returns as an immediate area of focus, which requires thoughtful development and strategic execution of a plan for these work processes. The ongoing processing delays harm taxpayers who continue to endure extensive waits for refunds. Although the IRS may need additional funding and staffing reinforcements, it must address the processing delays. The nation is on the cusp of another filing season, and taxpayers cannot afford to wait through substantial delays to receive refunds another year. The current status quo of the IRS continuously having to play catch-up by entering a new filing season with a backlog of millions of unprocessed tax returns is not reasonably sustainable. Our recommendations reflect the importance of prioritizing expeditious processing of tax returns and improving services to address the critical needs of taxpayers.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Utilize 2-D barcoding and/or optical character recognition technology to improve the accuracy and efficiency of processing of paper tax returns.<sup>67</sup>
2. Set a goal of having all correspondence replying to notices resolved or the merits responded to within 45 days of receipt. When the IRS falls short of hitting this target in any of its workstreams, it should ensure that no related compliance or collection actions are taken until the IRS has fairly considered and responded to the merits of the taxpayer's position stated in his or her correspondence.
3. Implement and increase callback technology capacity across all taxpayer-facing telephone lines.<sup>68</sup>
4. Develop a dedicated automated phone line where taxpayers can enter their information and upon proper identity authentication, may retrieve specific details about their tax accounts, including but not limited to the amount of AdvCTC and EIPs received.
5. Accelerate permanent implementation allowing for the use of e-signatures and secure email of documents by end of fiscal year 2022.<sup>69</sup>
6. Conduct a postmortem 2021 filing season review of ERS delays to identify potential reasons for the extended delays and proposed solutions.
7. Program systemic reconciliation capabilities for refundable credits such as the RRC, ACTC, CTC, and systemic lookback capabilities to prior year modified AGI where a taxpayer claims eligibility for tax credits that are based on prior year AGI, such as the EITC lookback rule, and any future tax benefits of similar nature and impact that have potential to delay tax return processing and eliminate the need for manual reviews for computational adjustments.
8. Create a filing season dashboard and provide detailed weekly information on the filing season, including the total amount of return inventory, number of returns beyond normal processing times, number of returns in suspense status, and the anticipated timeframes for working through them, while acknowledging that the situation is fluid and timeframes may change along with circumstances.<sup>70</sup>



## Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide dedicated multiyear funding adequate to allow the IRS to improve overall customer service and experience, as set forth in the Taxpayer First Act Report to Congress.<sup>71</sup>

## Endnotes

- 1 IRS response to TAS information request (June 23, 2021). See Erin M. Collins, 2021 Filing Season Bumps in the Road Part III, NATIONAL TAXPAYER ADVOCATE BLOG (June 29, 2021), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-2021-filing-season-bumps-in-the-road-part-iii/>.
- 2 *Id.* Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2021-46-064, *Effects of the COVID-19 Pandemic on Business Tax Return Processing Operations* (Sept. 2, 2021).
- 3 See Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178 (2020); Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (2020); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020).
- 4 American Rescue Plan Act of 2021 (ARPA), Pub. L. No. 117-2, 135 Stat. 40 (2021).
- 5 IRS, The Agency, Its Mission and Statutory Authority (Sept. 8, 2021), <https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority>.
- 6 See *IRS Operations, Hearing Before the S. Appropriations Comm., Subcomm. on Financial Services and General Government* 9, 117th Cong. (2021) (written testimony of Charles P. Rettig, Commissioner, Internal Revenue); IRS, IRS Making Progress on Key Areas Slowed by the Pandemic, But More Work Remains (Sept. 14, 2021), <https://www.irs.gov/about-irs/irs-making-progress-on-key-areas-slowed-by-the-pandemic-but-more-work-remains>.
- 7 The 2020 filing season is with respect to the processing of tax returns for tax year (TY) 2019.
- 8 See *IRS Operations, Hearing Before the S. Appropriations Comm., Subcomm. on Financial Services and General Government* 8, 117th Cong. (2021) (written testimony of Charles P. Rettig, Commissioner, Internal Revenue); Centers for Disease Control and Prevention, Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments (Apr. 5, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html>.
- 9 IRS Submission Processing deems a return as “processed” when all the steps necessary to post the return to the account have been taken.
- 10 TIGTA, Ref. No. 2021-46-023, *Results of the 2020 Filing Season and Effects of COVID-19 on Tax Processing Operations* 5 (Mar. 22, 2021).
- 11 See Most Serious Problem: E-Filing Barriers: Electronic Filing Barriers Increase Taxpayer Burden, Cause Processing Delays, and Waste IRS Resources, *infra*.
- 12 See Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178 (2020); CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (2020); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020); ARPA, Pub. L. No. 117-2, 135 Stat. 40 (2021).
- 13 CARES Act Division B, Title I, § 2101(g)(3). The law prohibited the IRS from issuing the first round of economic impact payments beyond December 31, 2020. IRC § 6428(f)(3)(A).
- 14 The law prohibited the IRS from issuing the second round of economic impact payments after January 15, 2021. IRC § 6428A(f)(3)(A)(ii)(I).
- 15 IRS, IR-2021-16, 2021 Tax Filing Season Begins Feb. 12; IRS Outlines Steps to Speed Refunds During Pandemic (Jan. 15, 2021), <https://www.irs.gov/newsroom/2021-tax-filing-season-begins-feb-12-irs-outlines-steps-to-speed-refunds-during-pandemic>.
- 16 The IRS continues to operate some of the oldest major information technology systems still in use in the federal government with some systems dating to the early 1960s. The IRS also operates about 60 case management systems that generally are not interoperable. For a detailed discussion, see National Taxpayer Advocate 2020 Annual Report to Congress 84-101 (Most Serious Problem: Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020).
- 17 *Id.*; IRS, IR-2020-280, Treasury and IRS Begin Delivering Second Round of Economic Impact Payments to Millions of Americans (Dec. 29, 2020), <https://www.irs.gov/newsroom/treasury-and-irs-begin-delivering-second-round-of-economic-impact-payments-to-millions-of-americans>; IRS, IR-2021-16, 2021 Tax Filing Season Begins Feb. 12; IRS Outlines Steps to Speed Refunds During Pandemic (Jan. 15, 2021), <https://www.irs.gov/newsroom/2021-tax-filing-season-begins-feb-12-irs-outlines-steps-to-speed-refunds-during-pandemic>; ARPA, Pub. L. No. 117-2, 135 Stat. 4 (2021); IRS, IR-2021-54, IRS Begins Delivering Third Round of Economic Impact Payments to Americans (Mar. 12, 2021), <https://www.irs.gov/newsroom/irs-begins-delivering-third-round-of-economic-impact-payments-to-americans>; IRS, IR-2021-59, Tax Day for Individuals Extended to May 17: Treasury, IRS Extend Filing and Payment Deadline (Mar. 17, 2021), <https://www.irs.gov/newsroom/tax-day-for-individuals-extended-to-may-17-treasury-irs-extend-filing-and-payment-deadline>. The last time the IRS observed the traditional mid-April filing season end date was the 2019 filing season.
- 18 ARPA, Pub. L. No. 117-2, Part 4 § 9042(a), 135 Stat. 4 (2021); IRS, New Exclusion of Up to \$10,200 of Unemployment Compensation, <https://www.irs.gov/forms-pubs/new-exclusion-of-up-to-10200-of-unemployment-compensation> (last visited Dec. 28, 2021); IRC § 36B(f)(2)(A); Internal Revenue Manual (IRM) 25.23.4.21.3, ARPA – Excess Advance Premium Tax Credit (APTC) Repayment Relief (July 15, 2021); IRS, IR-2021-84, IRS Suspends Requirement to Repay Excess Advance Payments of the 2020 Premium Tax

## Most Serious Problem #5: Filing Season Delays

- Credit; Those Claiming Net Premium Tax Credit Must File Form 8962 (Apr. 9, 2021), <https://www.irs.gov/newsroom/irs-suspends-requirement-to-repay-excess-advance-payments-of-the-2020-premium-tax-credit-those-claiming-net-premium-tax-credit-must-file-form-8962>; IRS, About Form 8962, Premium Tax Credit (2021), <https://www.irs.gov/forms-pubs/about-form-8962>.  
 Note: Taxpayers claiming a net Premium Tax Credit (PTC) will still need to file a Form 8962, and the change only applies to TY 2020.
- 19 As of the week ending March 12, 2021, the IRS had received about 66.1 million returns, approximately 43 percent of all 2020 individual income tax returns. IRS, Filing Season Statistics for Week Ending March 12, 2021, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-march-12-2021> (last visited May 27, 2021). The three-year average of the number of federal individual income tax returns filed for TYs 2017, 2018, and 2019 (less returns filed solely for the purpose of receiving economic incentive payments) is 153.1 million. IRS Compliance Data Warehouse, Individual Returns Transaction File (Apr. 29, 2021); IRS, IR-2021-123, IRS Sending More Than 2.8 Million Refunds to Those Who Already Paid Taxes on 2020 Unemployment Compensation (June 4, 2021), <https://www.irs.gov/newsroom/irs-sending-more-than-2-point-8-million-refunds-to-those-who-already-paid-taxes-on-2020-unemployment-compensation>.
  - 20 IRC § 32. EITC is an important anti-poverty tax incentive for working individual taxpayers earning a low- to moderate-income; the IRS was able to begin making systemic computations and adjustments and issue refunds to affected taxpayers in late May 2021.
  - 21 IRM 25.23.4.21.1, ARPA - Unemployment Income Tax Relief (Aug. 19, 2021).
  - 22 *Id.*
  - 23 IRS, Questions and Answers About the Third Economic Impact Payment – Topic A: General Information (Sept. 3, 2021), <https://www.irs.gov/newsroom/questions-and-answers-about-the-third-economic-impact-payment-topic-a-general-information>.
  - 24 IRS, 2021 Child Tax Credit and Advance Child Tax Credit Payments – Topic A: General Information (Oct. 8, 2021), <https://www.irs.gov/credits-deductions/2021-child-tax-credit-and-advance-child-tax-credit-payments-topic-a-general-information>.
  - 25 Temporary changes only apply to the 2021 tax year.
  - 26 IRS, Advance Child Tax Credit Eligibility Assistant, <https://www.irs.gov/credits-deductions/advance-child-tax-credit-eligibility-assistant>; IRS, 2021 Child Tax Credit and Advance Child Tax Credit Payments – Topic E: Advance Payment Process of the Child Tax Credit, <https://www.irs.gov/credits-deductions/2021-child-tax-credit-and-advance-child-tax-credit-payments-topic-e-advance-payment-process-of-the-child-tax-credit#e1>; IRS, Child Tax Credit Update Portal, <https://www.irs.gov/credits-deductions/child-tax-credit-update-portal>.
  - 27 IRS, About Schedule 8812 (Form 1040), Additional Child Tax Credit, <https://www.irs.gov/forms-pubs/about-schedule-8812-form-1040>.
  - 28 TAS, The TAS Digital Roadmap May Help You Navigate the IRS, <https://www.taxpayeradvocate.irs.gov/get-help/roadmap/>.
  - 29 Telework Enhancement Act of 2010, Pub. L. No. 111-292, 124 Stat. 3165 (2010).
  - 30 See IRM 3.12.37-21, ERS Status Codes (Jan. 1, 2020); IRM 3.11.20.7.2, Status Codes (Jan. 1, 2021); IRM 3.11.20.7.2; IRM 3.12.251.3.5, Status Codes (Jan. 1, 2016). The current workable ERS inventory capacity is 525,000. IRS response to TAS information request (Sept. 7, 2021).
  - 31 IRM 3.12.37-21; IRM 3.12.251.3.5; IRM 3.11.20.7.2.
  - 32 IRS response to TAS information request (Sept. 7, 2021).
  - 33 IRS, Filing Season Statistics for Week Ending May 21, 2021, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-may-21-2021>.
  - 34 IRS response to TAS information request (Sept. 7, 2021).
  - 35 *Id.*
  - 36 Department of the Treasury, Fact Sheet: *Treasury to Work to Ensure Families Get Access to Economic Impact Payments* (Jan. 22, 2021), <https://home.treasury.gov/news/featured-stories/fact-sheet-treasury-to-work-to-ensure-families-get-access-to-economic-impact-payments>.
  - 37 CARES Act Division B, Title I, § 2101(g)(3). The IRS was prohibited under the law from issuing the first round of economic impact payments after December 31, 2020. IRC § 6428(f)(3)(A). The IRS was prohibited under the law from issuing the second round of economic impact payments after January 15, 2021. IRC § 6428A(f)(3)(A)(ii)(I).
  - 38 IRS, Math Error Report Cycle 20 (ending May 21, 2021) (considering Taxpayer Notice Codes 681, 682, and 683).
  - 39 IRS, Math Error Report Cycle 37 (ending Sept. 16, 2021) (considering Taxpayer Notice Codes 681, 682, and 683).
  - 40 The Taxpayer Certainty and Disaster Tax Relief Act of 2020, Pub. L. No. 116-260, Div. EE, § 211, 134 Stat. 1182, 3066 (2020). To make the election, the taxpayer enters “PYEI” and the amount of the 2019 earned income on the dotted line next to Form 1040 or Form 1040-SR, line 27 (for EITC) and line 28 (for ACTC). IRS, Tax Year 2020 Form 1040 and Form 1040-SR Instructions 41, 57 (rev. Apr. 2021); IRS, Pub. 596, Earned Income Credit (EIC) 18 (Jan. 26, 2021).
  - 41 IRS response to TAS information request (June 23, 2021). See Erin M. Collins, 2021 Filing Season Bumps in the Road Part III, NATIONAL TAXPAYER ADVOCATE BLOG (June 29, 2021), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-2021-filing-season-bumps-in-the-road-part-iii/>.
  - 42 TIGTA, Ref. No. 2021-46-064, *Effects of the COVID-19 Pandemic on Business Tax Return Processing Operations* (Sept. 2, 2021).
  - 43 IRS response to TAS information request (June 23, 2021). Each cell value in Figure 2.5.2 was rounded to the nearest hundred thousand. Therefore, the totals may not equal the sum of the totaled cells. For calendar year 2020, there were an additional eight million pieces of unopened correspondence, which includes an undetermined number of unprocessed paper returns. As indicated in Figure 2.5.2, the IRS typically has some volume of unprocessed returns at the end of each filing season. If the IRS does not have math error authority to automatically correct an error, it will send the return to its “Reject” function. Most commonly, these are returns where a schedule is missing or where the taxpayer has omitted Form 8962, Premium Tax Credit, and Form 1095-A, Health Insurance Marketplace Statement, both of which are necessary for reconciling the PTC with the APTC. If the IRS does not have math error authority to automatically correct an error, it will send the return to its “Reject” function. These are usually paper returns and are commonly caused by entity problems with the taxpayer’s identification number, name, or both. For example, a recently married taxpayer signs her tax return using her new spouse’s last name. However, the return cannot post because the last name on her return does not match the name on file in the IRS and Social Security Administration (SSA) databases. The IRS will send the taxpayer a letter informing them of the problem and instructing them to contact SSA to update its records with their new name. Returns screened and selected by IRS identity theft/fraud detection filters requiring further scrutiny.
  - 44 IRS, Operations During COVID-19: Mission-critical functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited Dec. 28, 2021).
  - 45 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in TBOR are also codified in the IRC. See IRC § 7803(a)(3).

## Most Serious Problem #5: Filing Season Delays

- 46 See Most Serious Problem: *Transparency and Clarity: The IRS Lacks Proactive Transparency and Fails to Provide Timely, Accurate, and Clear Information*, *supra*.
- 47 IRC § 7803(a)(3)(A).
- 48 See Most Serious Problem: *Online Accounts: IRS Online Accounts Do Not Have Sufficient Functionality and Integration With Existing Tools to Meet the Needs of Taxpayers and Practitioners*, *infra*.
- 49 IRS, 2021 Weekly Individual Filing Season Report, Cumulative Statistics May 21, 2021 (Day 99 of 2021 Filing Season) for 2021 filing season.
- 50 IRS, Where's My Refund?, <https://www.irs.gov/refunds> (last visited Dec. 28, 2021); IRS, IRS2Go Mobile App, <https://www.irs.gov/newsroom/irs2goapp> (last visited Dec. 28, 2021).
- 51 See Most Serious Problem: *Transparency and Clarity: The IRS Lacks Proactive Transparency and Fails to Provide Timely, Accurate, and Clear Information*, *supra*.
- 52 See Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*, *supra*.
- 53 National Taxpayer Advocate 2020 Annual Report to Congress 38-40 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information and Insufficient Staffing*).
- 54 These numbers are enterprise-wide rather than particular to a specific phone line. IRS, Joint Operations Center, Snapshot Reports: Enterprise Snapshot for Enterprise Total (week ending May 22, 2021).
- 55 See *IRS's Fiscal Year 2022 Budget, Hearing Before the S. Comm. on Finance 1, 117th Cong. (2021)* (written statement of Charles P. Rettig, Commissioner, Internal Revenue); IRS, IRS Making Progress on Key Areas Slowed by the Pandemic, But More Work Remains (Sept. 14, 2021), <https://www.irs.gov/about-irs/irs-making-progress-on-key-areas-slowed-by-the-pandemic-but-more-work-remains>.
- 56 TIGTA, Ref. No. 2021-40-038, *Interim Results of the 2021 Filing Season* (May 6, 2021).
- 57 IRM 13.1.8, Congressional Affairs Program (Oct. 8, 2021).
- 58 See Erin M. Collins, TAS Facing Similar Challenges as the IRS: Processing Delays and Low Level of Service, NATIONAL TAXPAYER ADVOCATE BLOG (Sept. 1, 2021), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-tas-facing-similar-challenges-as-the-irs-processing-delays-and-low-level-of-service/>.
- 59 *Id.*
- 60 IRC § 7803.
- 61 See Erin M. Collins, TAS Facing Similar Challenges as the IRS: Processing Delays and Low Level of Service, NATIONAL TAXPAYER ADVOCATE BLOG (Sept. 1, 2021), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-tas-facing-similar-challenges-as-the-irs-processing-delays-and-low-level-of-service/>.
- 62 See Most Serious Problem: *E-Filing Barriers: Electronic Filing Barriers Increase Taxpayer Burden, Cause Processing Delays, and Waste IRS Resources*, *infra*.
- 63 See Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*, *supra*.
- 64 See Most Serious Problem: *Digital Communications: Digital Communication Tools Are Too Limited, Making Communication With the IRS Unnecessarily Difficult*, *infra*.
- 65 See Most Serious Problem: *Transparency and Clarity: The IRS Lacks Proactive Transparency and Fails to Provide Timely, Accurate, and Clear Information*, *supra*.
- 66 National Taxpayer Advocate 2020 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration 3-6* (Revamp the IRS Budget Structure and Provide Sufficient Funding to Improve the Taxpayer Experience and Modernize the IRS's Information Technology Systems); Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019).
- 67 See Most Serious Problem: *E-Filing Barriers: Electronic Filing Barriers Increase Taxpayer Burden, Cause Processing Delays, and Waste IRS Resources*, *infra*.
- 68 See Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*, *supra*.
- 69 See Most Serious Problem: *Digital Communications: Digital Communication Tools Are Too Limited, Making Communication With the IRS Unnecessarily Difficult*, *infra*.
- 70 See Most Serious Problem: *Transparency and Clarity: The IRS Lacks Proactive Transparency and Fails to Provide Timely, Accurate, and Clear Information*, *supra*.
- 71 National Taxpayer Advocate 2020 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration 3-6* (Revamp the IRS Budget Structure and Provide Sufficient Funding to Improve the Taxpayer Experience and Modernize the IRS's Information Technology Systems); Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019).

## ONLINE ACCOUNTS: IRS Online Accounts Do Not Have Sufficient Functionality and Integration With Existing Tools to Meet the Needs of Taxpayers and Practitioners

### WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Imagine sitting at your computer or on your mobile device and being able to quickly access answers to tax questions, review account information, upload or exchange documents, receive alerts to check your online account to view the latest IRS correspondence, check the status of your original or amended tax return, receive notification of delays and instructions on how to clarify an issue, or communicate with an IRS revenue agent, revenue officer, or appeals officer, all by logging into one portal. In its current state, the IRS's Online Account application provides individual taxpayers some limited functionality focused on payments and compliance but falls short of providing what taxpayers want, need, and expect for service. For example, individuals have no options within the Online Account application to resolve simple issues (e.g., certain math errors), chat or schedule a chat with IRS representatives, or provide documentation. Business taxpayers currently do not have the ability to access a business online account, and tax professionals lack the ability to access their clients' data within Tax Pro Account.

The National Taxpayer Advocate would like to stop *imagining* this functionality and see the IRS *delivering* these much-needed online account features to all taxpayers. Although we recognize and appreciate the myriad of challenges, including the constraints of implementing legislative changes, congressional budget allocations, limited human resources,<sup>1</sup> cybersecurity concerns, and the transformation of business operations, the need for a more robust online account presence is clear, present, and immediate if the IRS has any hope to avoid the service issues encountered in the 2021 filing season.<sup>2</sup>

### EXPLANATION OF THE PROBLEM

Every day, taxpayers use their computers or mobile devices to access financial accounts. They pay bills, make changes to their account information, add/cancel services, purchase/return products, conduct banking or investment transactions, review credit card statements, order food deliveries, meet virtually with family members or friends, make inquiries, and even chat with a business customer service representative (CSR); the list is endless. Yet, similar options are not available for taxpayers wishing to engage online with the IRS. A truly robust IRS online account system would transform tax administration.

Technology use among other government agencies and within the private sector has heightened taxpayer expectations for quality online service from the IRS. Taxpayers and tax professionals have come to expect secure and convenient access to their personal and client information. A recent study found that 76 percent of respondents felt that government services should be similar to or better than those offered by the best private sector organizations.<sup>3</sup> Taxpayers desire and expect the ability to engage in communications and transactions similar to those with their financial services providers.<sup>4</sup>

The severe disruption in IRS operations resulting from the COVID-19 pandemic (including historically low levels of phone service<sup>5</sup> and long delays for paper processing<sup>6</sup>) spotlighted the critical need for the IRS to increase online offerings to assist taxpayers in providing the information they need to fulfill their tax obligations. As taxpayers had limited opportunities to interact with the IRS in person or via telephone, the

IRS had an opportunity – an obligation, even – to provide key information in a format easily accessible by taxpayers. This past year, the IRS was forced to quickly deploy a number of online services and capabilities, including electronic portals for Economic Impact Payments and advance payments of the Child Tax Credit, which were beneficial to millions of taxpayers. Unfortunately, these services were designed as standalone portals with limited and specific functionality.

Despite its progress, the IRS has yet to develop and adopt a one-stop solution for online and digital offerings that combines communications and interactions with individual and business taxpayers as well as with tax professionals who represent these taxpayers. While the IRS has embarked into this digital self-service realm (*e.g.*, IRS2Go app, Where's My Refund? and Where's My Amended Return? online tools, and Taxpayer Digital Communications (TDC)), many of these are standalone applications not readily accessible in one central location to taxpayers and practitioners. Imagine what the IRS can accomplish and how much time and effort it could save if taxpayers could easily access their tax information online. The National Taxpayer Advocate wants to stop imagining this; the IRS needs to have robust online accounts available for all taxpayers and their representatives.

We recognize that the IRS is in the midst of a six-year modernization plan that includes a commitment to modernizing the taxpayer experience.<sup>7</sup> A key part of this plan must be a strong commitment to prioritize development of a robust online account for individual and business taxpayers, along with practitioners. The IRS agreed with ten of the 11 online account-related recommendations in the National Taxpayer Advocate's 2020 Annual Report to Congress but cited funding limitations for eight of these recommendations.<sup>8</sup> Until the IRS promptly adopts and implements additional online account features heading into the 2022 filing season, we continue to question the IRS's commitment to providing first-rate taxpayer service.

## ANALYSIS

### Congressional Directives to Improve the Taxpayer Experience

In recent years, Congress has clearly and emphatically stated that the federal government needs to do a better job improving the customer experience. The 21st Century Integrated Digital Experience Act (21st Century IDEA) was enacted in 2018 to improve the digital experience for government customers.<sup>9</sup>

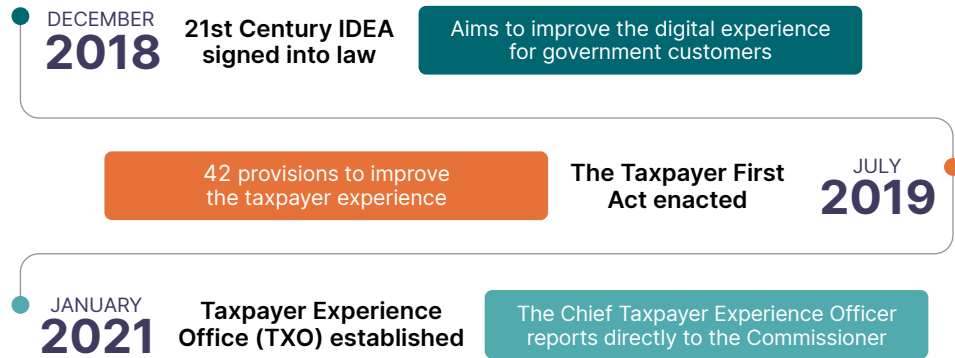
In 2019, Congress enacted the Taxpayer First Act (TFA),<sup>10</sup> directing the IRS to restructure and enhance the way it serves taxpayers. The TFA consists of 42 provisions aimed to ensure the IRS delivers a 21st-century customer experience, including:

- **Comprehensive customer service strategy (§ 1101):** Section 1101 requires the IRS to develop a comprehensive customer service strategy that includes best practices similar to those provided by private industry to meet taxpayers' reasonable expectations for, among other things, expanded online services; and
- **Electronic authorization of practitioners (§ 2302):** Section 2302 requires the IRS to publish guidance to establish procedures to allow taxpayers to electronically authorize disclosure to a practitioner or grant power of attorney to a practitioner.

To help the IRS comply with the 21st Century IDEA and the TFA, the IRS established the Taxpayer Experience Office (TXO), headed by a Chief Taxpayer Experience Officer who reports directly to the Commissioner.<sup>11</sup>

FIGURE 2.6.1

### Congressional Directives to Improve the Taxpayer Experience



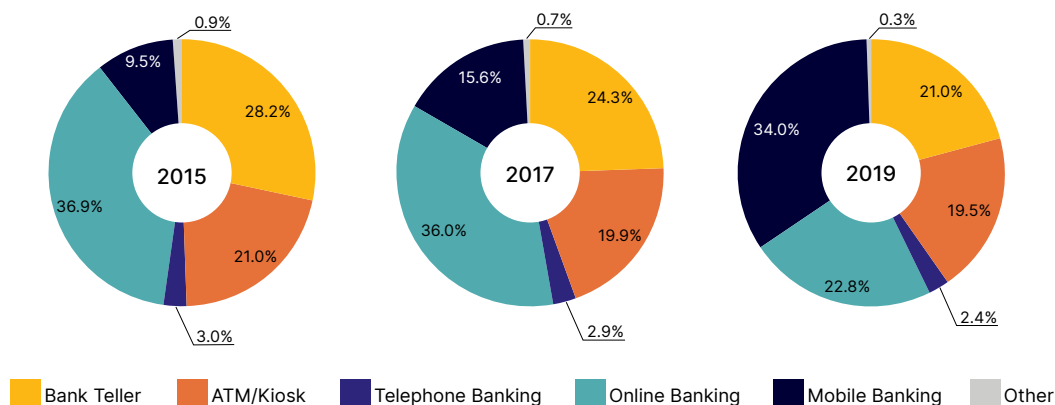
In September 2021, the TXO released a Taxpayer Experience Strategy Roadmap, a high-level plan that outlined its priorities for the next four years.<sup>12</sup> Improved online service offerings fall within two of the six focus areas articulated in the roadmap: Expanded Digital Services and Seamless Taxpayer Experience.<sup>13</sup>

### Consumer Preferences for Online Services Are Increasing at a Rapid Rate

In today's environment, consumers have come to expect the convenience of completing actions on their account without the need for face-to-face or telephone assistance. The Federal Deposit Insurance Corporation (FDIC) has tracked trends in banking preferences of American households since 2009. In its latest survey conducted in 2019, FDIC found that 57 percent of households preferred online or mobile banking as their primary method to access their bank account, up from 52 percent in 2017 and 46 percent in 2015.<sup>14</sup>

FIGURE 2.6.2<sup>15</sup>

### Primary Method Used to Access Bank Account by Year, for Banked Households That Accessed Their Account in the Past 12 Months



Think about your household or business usage of online services since 2019. Has it increased? Certainly, the COVID-19 pandemic has transformed many aspects of American lives and has led to a surge in the use

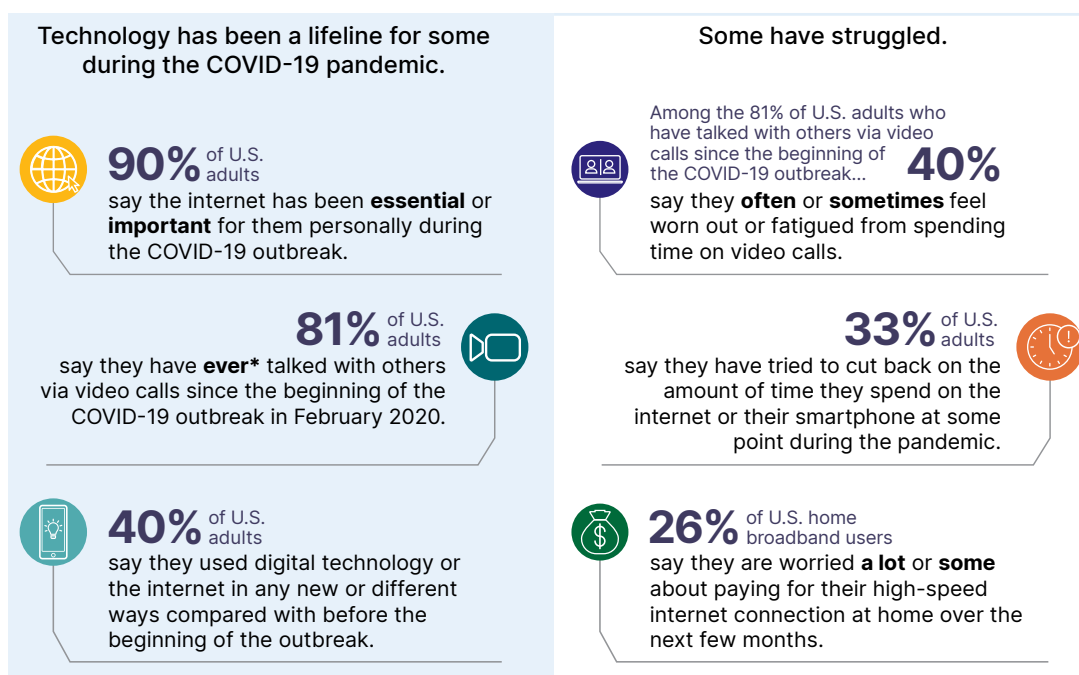


of digital technology. For example, there was a 200 percent jump in new mobile banking registrations in April 2020, which corresponded with a 50 percent reduction in branch bank traffic the same month.<sup>16</sup>

Results from a Pew Research Center survey conducted in April 2021 reveal the extent to which Americans' use of the internet has changed. Ninety percent of U.S. adults say the internet has been essential or important to them during the pandemic.<sup>17</sup>

**FIGURE 2.6.3**

### Reliance on Technology During the Pandemic



\*\*Ever\* talked with others via video calls includes those who say they did so several times a day, about once a day, a few times a week, about once a week, every few weeks, or less often.

Note: Those who did not give an answer or who gave other responses are not shown.

Source: Survey of U.S. adults conducted April 12-18, 2021. "The Internet and the Pandemic."

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As consumer preferences evolve, the IRS must offer a more dynamic set of online services with the means to seamlessly connect to other digital or online products. However, the development of robust online service offerings must not come at the expense of reduced levels of service via other channels. Some segments of the taxpaying population (*e.g.*, Amish, elderly, low-income, or rural taxpayers) cannot or prefer not to use online services. The IRS must resist the temptation to cut back on traditional service delivery channels such as in-person and telephone customer service options.

### Current IRS Online Service Offerings

The IRS has made significant strides in bolstering its online service offerings in recent years. Since 2016, the IRS has offered taxpayers its Online Account application and gradually increased its functionality. Currently, registered users of Online Account may, among other capabilities, view account balances, make payments, view tax records, view select notices and letters, and view authorizations for online requests from tax professionals.<sup>18</sup>

**FIGURE 2.6.4, Online Account Fiscal Year (FY) 2021 Statistics (October 2020 Through September 2021)<sup>19</sup>**

Navigated to	% Increased over this period in FY 20
<b>103.5M</b> sessions navigated to View Your Account Information Page	67%
<b>50.5M</b> authenticated user sessions	118%
<b>12.2M</b> unique users have accessed their online account	101%
The following actions were taken after viewing balance information:	
<b>5.2M</b> to Direct Pay, resulting in <b>2.2M</b> payments totaling over <b>10B</b> • Increase of 49%, 59% and 82%, respectively over FY 20	
<b>1.9M</b> to Pay by Card — payment data is not available • Increase of 61% over this period in FY 20	
<b>2.8M</b> to Online Payment Agreement, generating <b>597K</b> agreements • Increase of 31% and 100%, respectively over FY 20	
<b>199K</b> to Pay by Check or Money Order • Increase of 5% over this period in FY 20	
<b>15.3M</b> sessions navigated to Get Transcript, <b>10.9M</b> sessions with a download • Increase of 157% and 190%, respectively over FY 20	

Taxpayers accessed the Online Account application slightly over 50 million times in FY 2021, more than double the usage in FY 2020.<sup>20</sup> In addition to the Online Account application for individuals, the IRS has provided other online applications to assist taxpayers, as shown in Figure 2.6.5.

**FIGURE 2.6.5, IRS Online Self-Assistance Applications<sup>21</sup>**

Application Name	Taxpayer Function	Information From Application Reflected in Online Account	Type of User	Number of Transactions or Sessions, FY 2020	Number of Transactions or Sessions, FY 2021 (Through August)
Online Account	View key information such as balance due and payment history, make a payment online, request a payment agreement, or access tax records via Get Transcript	N/A	Individual	23,164,489	47,112,051
Get Transcripts Online	Retrieve a variety of transcripts online to view, print, or download	Yes	Individual	36,422,000	72,040,000
Get Transcripts by Mail	Receive a return or account transcript through mail	Yes	Individual and Business	1,462,000	2,192,000
Direct Pay	Pay directly from bank account	Yes	Individual	12,507,969	14,646,413
Online Payment Agreements	Request a payment agreement for certain taxpayers	Yes	Individual and Business	965,418	1,361,327
Get My Payment	Verify payment amount and status of Economic Impact Payments	Yes	Individual	557,734,867	693,921,605
Where's My Amended Return?	Verify receipt and processing status for amended return (Form 1040X)	No	Individual	4,178,000	11,792,000

## Most Serious Problem #6: Online Accounts

Application Name	Taxpayer Function	Information From Application Reflected in Online Account	Type of User	Number of Transactions or Sessions, FY 2020	Number of Transactions or Sessions, FY 2021 (Through August)
<b>ID Verify</b>	Verify identity so the IRS can process a federal income tax return filed with the taxpayer's name and taxpayer identification number	No	Individual	283,784	621,507
<b>IP PIN</b>	Validate identity and retrieve an Identity Protection PIN online	No	Individual	398,991	664,877
<b>Modernized Internet Employer Identification Number</b>	Apply for and receive an employer identification number (EIN) over the web	No	Individual and Business	5,528,000	6,540,000
<b>Transcript Delivery Service – Reporting Agents</b>	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	269,000	343,000
<b>Transcript Delivery Service – States</b>	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	431,860	305,000
<b>Transcript Delivery Service – Third Parties</b>	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	136,517,000	205,170,000
<b>Income Verification Express Service</b>	Retrieve transcripts from an online secure mailbox to verify income of a borrower	No	Individual and Business	12,317,000	13,750,000
<b>Free Application for Federal Student Aid on the Web</b>	Access tax return information and transfer it directly to the FAFSA form	No	Individual	17,665,000	14,867,000
<b>Tax Withholding Estimator</b>	Estimate income tax for current tax year and compare that estimate with current withholding	No	Individual	5,656,385	4,771,417
<b>Interactive Tax Assistant</b>	Receive answers to basic tax law questions	No	Individual and Business	2,736,000	2,179,000
<b>Child Tax Credit Update Portal</b>	Verify if enrolled to receive advance payments; unenroll from advance payments; update bank account and mailing address	No	Individual	N/A	21,602,223 (application launched 6/21/21)

Online service offerings are as important as ever for taxpayers as the IRS deals with continued processing disruptions, low levels of telephone service, delays in correspondence, and limited options for walk-in assistance – taxpayers simply do not have many viable options for service. To alleviate some of the traffic flow to traditional offline service, it is critical the IRS immediately leverage digital channels for service delivery where feasible. We recognize and applaud the progress the IRS has made in its online service offerings in recent years. Though we are optimistic that the IRS will eventually add functionality for taxpayers and practitioners, the National Taxpayer Advocate believes that the IRS should prioritize and add this functionality quickly.

## **Suggestions for Improved Taxpayer Online Services**

### ***The IRS Must Expand Online Account Features and Functionality***

The National Taxpayer Advocate supports the multiyear IRS modernization plan that envisions the Online Account application becoming the central hub for individual taxpayers to access all of their information and take action where needed. The IRS has established and socialized IRS.gov as the authoritative source online for getting general information, calculators, videos, news, etc., and for accessing digital services. The Online Account application, as a personalized entry to IRS.gov, should provide taxpayers the ability to navigate to all IRS online information and services.

To its credit, the IRS has steadily incorporated additional features to Online Account over the years, but there are still some significant limitations. For example, currently there is no ability for taxpayers to take these actions within the Online Account application:

1. Authorize a third-party representative via Online Account or revoke a third-party authorization (this is currently limited to certain tax professionals who submit authorizations through a Tax Pro Account);
2. View all account activity (only select notices and letters are currently loaded on Online Account);
3. Upload correspondence and attach documents;
4. Chat with an IRS representative;
5. Seamlessly access all relevant FAQs, IRS videos, Interactive Tax Assistant, or other digital services not yet fully integrated while within Online Account;
6. Provide a payment amortization estimate for taxpayers to determine best payment options; and
7. Set self-service alerts for activity on Online Account.

Allowing such capabilities from within the Online Account application would not only improve taxpayer satisfaction but also could alleviate some of the burden on IRS employees staffing the toll-free telephone lines and Taxpayer Assistance Centers (TACs). The IRS can fully harness the benefits of online services by making the taxpayer experience interactive. For example, instead of merely providing information to taxpayers in a one-way communication stream, the IRS should enable taxpayers to upload documents and send information to the IRS within Online Account.<sup>22</sup> If the IRS were to create a virtual chat or other secure messaging options within Online Account to communicate back and forth with taxpayers or practitioners, it would lessen the need for taxpayers to call the understaffed toll-free telephone lines or make unnecessary trips to TACs.

As the IRS continues to have increasing interaction with the public online, it should ensure that taxpayers are made aware of their rights. Currently, taxpayer rights are documented in IRS Publication 1 and available directly on IRS.gov. The IRS should include a digital version of Publication 1 that can be easily accessed by Online Account users, especially when taxpayers use the account balance and payment features. The IRS should also provide links to TAS and other programs, such as Low Income Taxpayer Clinics (LITCs), Volunteer Income Tax Assistance (VITA), and Tax Counseling for the Elderly (TCE), on the main landing page and the top banner of the IRS.gov main page.

### ***Provide More Proactive Customer Service Via Online Services***

The IRS should continue to leverage its online services to provide personalized messages based on the specific taxpayer interaction. For example, if a taxpayer is viewing payment options in Online Account, it would be helpful if the IRS provided a link to explain, “What to do if you don’t think you owe this amount.” Or if a taxpayer is navigating the tax withholding estimator, the IRS should use the Online Account application as a hub to display links to existing videos or information on IRS.gov on that subject, without requiring the taxpayer to leave Online Account. By including targeted links to IRS.gov content, the IRS could promote compliance and bolster taxpayer satisfaction relatively inexpensively. Imagine if taxpayers had relevant information easily accessible without the need to pick up a phone or send in a letter. A win-win for taxpayers, the IRS, and tax administration.

### ***The IRS Should Offer Online Account for Business Taxpayers***

The impact of COVID-19, combined with related legislative tax and economic relief provisions, has created many challenges for businesses, creating increased need for IRS support. Sadly, there is no comparable version of the Online Account application for business taxpayers. Business taxpayers (large and small) would undoubtedly benefit from a Business Online Account (BOLA) offering the same features afforded to individual taxpayers.

TAS is encouraged to learn that the IRS is planning for the development of the BOLA application.<sup>23</sup> An online account application tailored for business taxpayers could provide additional features such as populating due dates for upcoming tax return or information return filings, sending reminders, and listing payment due dates and payment options. One specific example where BOLA adds value is in communicating the status of Forms 941, Employer’s Quarterly Federal Tax Returns. The IRS has experienced delays in processing such forms,<sup>24</sup> and one way to ease the burden of phone calls and taxpayer correspondence would be to enable employers or their representatives to check the status via BOLA.

### ***Tax Pro Account Requires Additional Functionality***

The IRS rolled out Tax Pro Account in 2021 for tax professionals. A tax professional must have an active Tax Pro Account and receive approval from a taxpayer with an active Online Account to use Tax Pro Account.<sup>25</sup>

However, the current iteration of Tax Pro Account is severely limited in scope. It is only useful for individual tax professionals who have a Centralized Authorization File (CAF) number in good standing who submit and execute a power of attorney or tax information authorization from clients. Additional features of Tax Pro Account that tax professionals might find helpful include the ability to:

- View clients’ Online Accounts and notices (when authorized);
- Act on behalf of clients via the clients’ Online Accounts;
- Communicate virtually with Practitioner Priority Service;
- Receive proactive messaging from the IRS, including reminders and educational items to foster compliance;
- View clients’ payment history and any payment agreements;
- Upload documents and provide information on behalf of clients;
- Interact with the IRS using secure email during an audit; and
- Request account transcripts for clients within Tax Pro Account.

Allowing tax professionals more capabilities within Tax Pro Account would not only benefit tax professionals but could also improve the adoption rate of taxpayers using the Online Account application. The National Taxpayer Advocate strongly encourages the IRS to prioritize the ability for practitioners to view their clients’ Online Account information from within Tax Pro Account. This one improvement would be significant for

practitioners in assisting taxpayers to meet their filing and payment needs and provide much-needed assistance and guidance on tax issues. Again, a win-win for taxpayers, practitioners, and tax administration.

### ***The IRS Has Made Advances in Secure Authentication, Which Should Lead to One-Stop Access***

Because the IRS is the custodian of sensitive financial information from hundreds of millions of taxpayers,<sup>26</sup> we appreciate the need for it to take precautions to protect its data. TAS commends the IRS on the launch of the Secure Access Digital Identity (SADI) platform in July 2021 (and the subsequent expansion in November 2021).<sup>27</sup> SADI's modernized authentication approach addresses some shortcomings of the prior authentication process while meeting the updated digital identity guidelines from the National Institute of Standards (NIST) and Technology and Office of Management and Budget (OMB) policy.<sup>28</sup>

Although SADI provides improved options for taxpayers to pass authentication with a single secure log-in, taxpayers may still encounter difficulty navigating the various online resources available to them. For example, even if a taxpayer has uploaded digital documents during a correspondence audit, the taxpayer cannot access these documents from his or her Online Account. Similarly, even if a taxpayer has been working on and uploading digital documents via the TDC application during a correspondence audit, the taxpayer cannot access this information from his or her Online Account. The IRS should deliver an online taxpayer portal to centralize access to information and resources so taxpayers can easily access tools and information from within Online Account.

Requiring taxpayers to navigate between several standalone systems is unnecessarily burdensome. A single secure log-in combined with a consolidated resources page or customer hub may increase use and knowledge of online services and products.

### ***Tap Into the Mobile App***

Consumers desire convenience. They want access to their data while on the go, as evidenced by the trend in banking preferences – mobile apps have overtaken online access as the preferred way for banking customers to access their bank accounts.<sup>29</sup> The IRS has made strides in meeting taxpayer preferences for interaction while on the go but has focused its efforts on building transactional experiences that are mobile-responsive (*e.g.*, “mobile-friendly” web pages).<sup>30</sup> World-class taxpayer service demands that the IRS increase functionality of its mobile app, IRS2Go, to mirror the functionality available from its mobile-friendly online offerings, such as displaying account payment information and IRS notices.

### ***The IRS Should Integrate the Where's My Refund? Tool With the Online Account Application and Offer More Specificity***

This past filing season, the Where's My Refund? feature was a highly utilized tool on IRS.gov by taxpayers eager to find out when they can expect their tax refund. For the tens of millions of taxpayers who experienced delays in receiving their tax refunds, the information provided by the tool was not very specific or helpful; it merely continued to display the “received” status day after day.

The IRS indicated that it plans to integrate the Where's My Refund? refund status functionality into the Online Account application.<sup>31</sup> Such integration would increase data security by preventing identity thieves from easily accessing refund information (since taxpayers would need to authenticate their identity prior to receiving detailed information about their refund status). However, the IRS has been unable to receive the necessary funding to make these improvements.<sup>32</sup> The National Taxpayer Advocate recommends that the IRS prioritize the funding of these improvements to the Where's My Refund? and Where's My Amended Return? tools in FY 2022.

The IRS should provide additional detail regarding the current stage of refund processing, including an anticipated timeline for processing. In the interim, we recommend the IRS expand the current status displays



for refund status to include “additional delays in processing” or similar wording, or provide an explanation or current timelines in addition to the current “received,” “approved,” or “sent” statuses.<sup>33</sup> More specific messaging updated weekly would increase taxpayer satisfaction, decrease the call volume to IRS telephone CSRs, and reduce the need to send paper correspondence.

## CONCLUSION AND RECOMMENDATIONS

Online service offerings are even more important for taxpayers as the IRS continues to deal with processing disruptions, low levels of telephone service, delays in correspondence, and limited options for walk-in assistance – taxpayers simply do not have many viable options for offline service. We acknowledge the multitude of challenges associated with developing and rolling out robust online service offerings – whether related to funding, human resources, or security concerns – and applaud the IRS for the significant progress it has already made. We encourage the IRS to prioritize its efforts and continue pursuing long-range plans for both resources and sustainable multiyear funding.

TAS looks forward to a continued partnership with the IRS as it works toward delivering a better online experience for taxpayers, including improvement in authentication processes. In the interim, taxpayers need better options for self-service and self-education using online tools. We believe that the improvements outlined here are attainable if the IRS assigns the appropriate priority to these projects.

## Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Prioritize Tax Pro Account updates to enable practitioners to upload documents and request transcripts on behalf of clients.
2. Prioritize and expedite efforts to deliver BOLA to business taxpayers by the end of FY 2023.
3. Expand IRS2Go mobile app functionality, such as displaying account payment information and IRS notices.
4. Add links to relevant IRS.gov content and videos where appropriate to allow taxpayers easy access to self-help information and personalized guidance based on their usage of their Online Account.
5. Prioritize the development and deployment of more personalized status updates for Where’s My Refund? and Where’s My Amended Return? online tools.
6. Expand the current displays and updates for refund status to include “additional delays in processing” (or similar language) in addition to the current “accepted,” “approved,” or “sent” statuses.
7. Include Publication 1 in the Online Account application and provide links to TAS, LITCs, VITA, and TCE on the main landing page and the top banner of the IRS.gov main page.

## RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division, and Chief Taxpayer Experience Officer  
 Darren Guillot, Commissioner, Collection and Operations Support, Small Business/Self-Employed Division  
 De Lon Harris, Commissioner, Examination and Operations Support, Small Business/Self-Employed Division  
 Karen Howard, Director, Office of Online Services  
 Robert Choi, Chief Privacy Officer, Privacy, Governmental Liaison and Disclosure

## IRS COMMENTS

The IRS is strongly committed to expanding digital services. We share the National Taxpayer Advocate's vision for online accounts for individual and business taxpayers that allow them to view their personalized tax information and transact via self-service. We are also working towards our vision for tax professionals to be able to establish and manage their authorization relationships online, access tax-related information and represent their clients with the IRS.

In Fiscal Year 2021, the IRS launched many new online account features, including:

- The ability for taxpayers to view and approve, or reject, authorization requests (Power of Attorney or Tax Information Authorizations) from their tax professionals. This enabled the corresponding first release of Tax Pro Account.
- The ability for taxpayers to view digital versions of notices the IRS issued to them within their online account, including 11 of the highest volume notices.
- The Child Tax Credit Update Portal, with options to view and manage child tax credit payments, which are accessible from within Online Account and available in English and Spanish.
- The ability for certain taxpayers to create a short-term payment plan within their online account, including the new option for a 180-day plan.

Our goal is a centralized account experience; however, there are necessary trade-offs between focusing on new features not otherwise available online or on integrating different applications that are already available. With our limited resources, we have so far focused on integrating the payment and payment plan experiences, and on building all applications in a way that is mobile-friendly.

- The IRS recently launched an integrated payment feature for individual online account, enabling taxpayers to make balance, estimated tax or other types of payments.
- We plan to integrate Taxpayer Digital Communication features into our account experiences so taxpayers can communicate securely with the IRS within their online account.
- We also recently launched improvements to identity verification, making our applications more secure and more accessible. Taxpayers can use the same credentials to access Online Account, Tax Pro Account, and other applications.

All of these are big steps towards a more robust and fully integrated online experience.

For business taxpayers, the IRS is conducting user research to inform a roadmap for our business online account, which we hope to launch within the coming years. Inter-product features such as tax pro and business authorizations are essential to meet user needs but are also very complex, requiring interconnected updates to different applications and multiple IRS systems. Product roadmaps and plans may expand or contract from year to year to align with budget variance, but the IRS remains committed to delivering the full vision for taxpayer digital services.

In planning our product roadmap and making updates to IRS.gov, we use a data-driven approach with direct input from taxpayers and tax professionals. The IRS conducts frequent user testing, analyzes survey feedback and application data, and conducts periodic targeted research analyses, stakeholder interviews or focus groups. We use this feedback to deliver the highest value features for taxpayers and practitioners in ways that meet user needs. Some features recommended in this report have not surfaced in our research. We welcome the opportunity to work with the Taxpayer Advocate Service and to hear more about the underlying research and constituent data that support the items mentioned in this report.

Over the next several years, the IRS hopes to increase the features and personalization of individual online account and launch a business online account, while improving the Tax Pro Account. We have a long backlog of additional features and integrations that we must continuously prioritize. Our ability to deliver new features and increase our online services is dependent on whether funding is allocated to the programs and offices responsible for developing web applications. While we agree on a shared vision for digital services and remain committed to addressing last year's recommendations, potential budget limitations for FY22 and FY23 could result in a pace of progress that may not meet the expectations and timelines expressed in this report.

## TAXPAYER ADVOCATE SERVICE COMMENTS

The National Taxpayer Advocate is encouraged by the IRS's renewed commitment to expanding digital services for individual taxpayers, business taxpayers, and tax professionals. We appreciate the efforts the IRS has made on this front, including a significant expansion of functionality for the Online Account application during the past year.

We recognize the reality of funding limitations that the IRS must abide by, with competing priorities set forth by external stakeholders (including Congress and Secretary of the Treasury). However, we encourage the IRS to build a business case for the necessary resources to implement the short-term and long-term improvements to its online account features – much of what we recommend in this report will save the IRS from expending resources downstream. Taxpayers are counting on the IRS to prioritize its efforts to secure sustainable multiyear funding to make robust online account services a reality today.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Prioritize Tax Pro Account updates to enable practitioners to upload documents and request transcripts on behalf of clients.
2. Prioritize and expedite efforts to deliver BOLA to business taxpayers by the end of FY 2023.
3. Expand IRS2Go mobile app functionality, such as displaying account payment information and IRS notices.
4. Add links to relevant IRS.gov content and videos where appropriate to allow taxpayers easy access to self-help information and personalized guidance based on their usage of their Online Account.
5. Prioritize the development and deployment of more personalized status updates for Where's My Refund? and Where's My Amended Return? online tools.
6. Expand the current displays and updates for refund status to include "additional delays in processing" (or similar language) in addition to the current "accepted," "approved," or "sent" statuses.
7. Include Publication 1 in the Online Account application and provide links to TAS, LITCs, VITA, and TCE on the main landing page and the top banner of the IRS.gov main page.

## Endnotes

- 1 See Most Serious Problem: *IRS Recruitment, Hiring, and Training: The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration*, *supra*.
- 2 See Most Serious Problem: *Filing Season Delays: Millions of Taxpayers Experienced Difficulties and Challenges in the 2021 Filing Season*, *supra*.
- 3 Boston Consulting Group, Inc., and Salesforce, *The Global Trust Imperative* 4, 12 (2021), [https://www.salesforce.com/content/dam/web/en\\_us/www/documents/industries/government/bcg\\_salesforce\\_global\\_trust\\_imperative\\_compressed.pdf](https://www.salesforce.com/content/dam/web/en_us/www/documents/industries/government/bcg_salesforce_global_trust_imperative_compressed.pdf).
- 4 A 2020 study conducted by the IRS found that 83 percent of respondents felt it was important to have “[a]n IRS personal online account that allows you to login online, confirm your identity, and access your IRS tax account for information and transactions.” IRS, Research, Applied Analytics, and Statistics, Comprehensive Taxpayer Attitude Survey 2020 Executive Report 43 (Nov. 11, 2020), <https://www.irs.gov/pub/irs-pdf/p5296.pdf>. See also Boston Consulting Group, Inc., and Salesforce, *The Global Trust Imperative* 4, 12 (2021), [https://www.salesforce.com/content/dam/web/en\\_us/www/documents/industries/government/bcg\\_salesforce\\_global\\_trust\\_imperative\\_compressed.pdf](https://www.salesforce.com/content/dam/web/en_us/www/documents/industries/government/bcg_salesforce_global_trust_imperative_compressed.pdf).
- 5 See Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*, *supra*.
- 6 See Most Serious Problem: *Filing Season Delays: Millions of Taxpayers Experienced Difficulties and Challenges in the 2021 Filing Season*, *supra*.
- 7 See IRS, Pub. 5336, Integrated Modernization Business Plan (Apr. 2019), <https://www.irs.gov/pub/irs-pdf/p5336.pdf>; National Taxpayer Advocate 2020 Annual Report to Congress 84-101 (Most Serious Problem: *Information Technology: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts*).
- 8 National Taxpayer Advocate Fiscal Year 2022 Objectives Report to Congress 74-83 (*IRS Responses to Administrative Recommendations Proposed in the National Taxpayer Advocate’s 2020 Annual Report to Congress*).
- 9 Pub. L. No. 115-336, 115th Cong. (2018).
- 10 Pub. L. No. 116-25, 116th Cong. (2019).
- 11 The first Chief Taxpayer Experience Officer chosen is the current Commissioner of the Wage and Investment Division, who will be serving in both roles concurrently. IRS, IR-2021-22, IRS Creates New Chief Taxpayer Experience Officer Position; Ken Corbin to Lead New Focus to Improve Service to Taxpayers (Jan. 26, 2021), <https://www.irs.gov/newsroom/irs-creates-new-chief-taxpayer-experience-officer-position-ken-corbin-to-lead-new-focus-to-improve-service-to-taxpayers>.
- 12 IRS, Taxpayer Experience Strategy Roadmap, FY 2022-2025 Roadmap (Sept. 30, 2021).
- 13 *Id.* at 13.
- 14 FDIC, *How America Banks: Household Use of Banking and Financial Services, 2019 FDIC Survey* 4 (Oct. 2020), <https://www.fdic.gov/analysis/household-survey/>.
- 15 *Id.* The sum of the columns in each year may not add up to 100 percent due to rounding.
- 16 See Ryan Haar, *How the Pandemic Pushed a Generation of Americans to Discover the Perks (and Risks) of Online Banking*, NEXTADVISOR (Jan. 8, 2021), <https://time.com/nextadvisor/banking/how-the-pandemic-is-changing-banking/>.
- 17 Pew Research Center, *The Internet and the Pandemic* (Sept. 1, 2021), <https://www.pewresearch.org/internet/2021/09/01/the-internet-and-the-pandemic/>.
- 18 IRS, Pub. 5533, Online Account (July 2021), <https://www.irs.gov/pub/irs-pdf/p5533.pdf>.
- 19 IRS, Online Account Status Briefing (Oct. 27, 2021).
- 20 There were 50,494,907 visits to Online Account during the full FY 2021. IRS response to TAS fact check (Dec. 3, 2021).
- 21 IRS response to TAS information request (Oct. 7, 2021).
- 22 The Taxpayer Experience Roadmap references the capability of taxpayers to securely upload documents. See IRS, Taxpayer Experience Strategy Roadmap, FY 2022-2025 Roadmap 14 (Sept. 30, 2021). The IRS allows taxpayers to upload documents in certain exam cases but has not yet expanded this functionality to Online Account. See SERP Alert 21A0316, Documentation Upload Tool (DUT) Implementation for Correspondence (updated Sept. 13, 2021).
- 23 On June 14, 2021, the IRS Office of Online Services submitted a Development Modernization and Enhancement request for \$1,292,000 in FY 2022 information technology funding for Business Online Account. (On file with TAS.)
- 24 As of December 1, 2021, the IRS had three million unprocessed Forms 941. IRS, IRS Operations During COVID-19: Mission Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited Dec. 13, 2021).
- 25 IRS, Who Can Use This Service, <https://www.irs.gov/tax-professionals/use-tax-pro-account> (last visited Dec. 23, 2021).
- 26 IRS, 2020 IRS Data Book Table 2, Number of Returns and Other Forms Filed, by Type, FY 2019 and 2020.
- 27 See Most Serious Problem: *Digital Communications: Digital Communication Tools Are Too Limited, Making Communication With the IRS Unnecessarily Difficult*, *infra*; IRS response to TAS fact check (Dec. 3, 2021).
- 28 See NIST, Special Publication 800-63-3, *Digital Identity Guidelines* (June 2017); OMB, M-19-17, *Enabling Mission Delivery Through Improved Identity, Credential, and Access Management (ICAM) Policy* 2, 7 (May 21, 2019).
- 29 FDIC, *How America Banks: Household Use of Banking and Financial Services, 2019 FDIC Survey* 4 (Oct. 2020), <https://www.fdic.gov/analysis/household-survey/>.
- 30 IRS response to TAS information request (Oct. 7, 2021).
- 31 *Id.*
- 32 *Id.*
- 33 See IRS, What Information Is Available?, <https://www.irs.gov/refunds/about-wheres-my-refund> (last visited Dec. 23, 2021). See also Most Serious Problem: *Transparency and Clarity: The IRS Lacks Proactive Transparency and Fails to Provide Timely, Accurate, and Clear Information*, *supra*.

## DIGITAL COMMUNICATIONS: Digital Communication Tools Are Too Limited, Making Communication With the IRS Unnecessarily Difficult

### WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Taxpayers contact the IRS when they need help to comply with their tax obligations. The COVID-19 pandemic combined with new programs the IRS was directed to administer has led to historically low levels of telephone service and forced the IRS to limit in-person appointments, frustrating taxpayers and leaving them searching for any available way to communicate with the IRS.<sup>1</sup>

The IRS had been taking steps to expand digital communication with taxpayers and their representatives before the pandemic struck, but the experience of the last year highlights the urgency of accelerating the implementation and expansion of digital communication options to help taxpayers and their representatives receive the help they need.<sup>2</sup>

### EXPLANATION OF THE PROBLEM

The IRS has been significantly underfunded for over a decade, and it has watched its workforce and budget steadily decline during that time.<sup>3</sup> In the Taxpayer First Act Report to Congress, the IRS made clear its commitment to expanding options for taxpayers and representatives to communicate with the IRS digitally. Digital tools allow taxpayers to:

- Securely sign and submit documents, thereby avoiding mail delays;
- Receive chat answers to questions, thereby avoiding calls to the IRS; and
- Access limited virtual services on a mobile device, providing a way for taxpayers to have a face-to-face interaction with an IRS employee without traveling to an IRS office.

An essential element of providing America's taxpayers top quality service in this area is providing user support to all who want to use digital communication tools. When digital communication tools are easy to find, understand, and use, they help ensure the taxpayer's *right to quality service* through clear and easily understandable communications.<sup>4</sup> During the pandemic, the IRS made it easier for some taxpayers to communicate digitally and shifted to a telework environment. But the IRS and taxpayers would benefit from prioritizing and expanding digital communications at a more rapid pace.<sup>5</sup>

Implementing expanded and new digital communication services is a necessity. However, the IRS needs to balance budget restrictions, use of existing resources, and taxpayer needs for each implementation. This includes publicizing the changes, educating taxpayers about the uses, collecting feedback, and making improvements as needed. Some taxpayers will need support in the identity proofing process. Others will need access from a mobile device. Taxpayers living in areas without broadband access may need the IRS to provide equipment that supports digital communication, and taxpayers living abroad face additional challenges. As the IRS implements new digital communication services and enhances existing technologies, it is critical that it integrate these services and tools into an omnichannel service environment as the foundation for seamless communication transitions and experiences across different channels, platforms, and devices.

## ANALYSIS

Currently, there are over 232 million individual taxpayers, and during calendar year 2021, they filed over 168 million individual and jointly filed tax returns; and businesses filed over 12 million corporate and partnership returns.<sup>6</sup> Yet, the available digital communications options, such as secure email and Taxpayer Digital Communications (TDC), are limited to a small population of taxpayers. The IRS must supplement or expand and make available to all taxpayers the ability to use a digital communication option to interact with the IRS to ensure quality service and an improved taxpayer experience. When the IRS takes an interest in a taxpayer, *e.g.*, auditing a taxpayer or pursuing collection, it offers the ability to communicate and exchange documents digitally, including email, text chat, and secure messaging.<sup>7</sup> But taxpayers seeking assistance with voluntary compliance have fewer options to communicate digitally with the IRS for help and face obstacles accessing their own information.<sup>8</sup> Offering online accounts with robust capabilities including two-way secure messaging is a necessity and can serve as a hub for accessing digital tools. See the Most Serious Problem on Online Accounts for a discussion of issues related to online account applications for individual or business taxpayers.<sup>9</sup>

**The IRS must supplement or expand and make available to all taxpayers the ability to use a digital communication option to interact with the IRS to ensure quality service and an improved taxpayer experience.**

### The IRS Should Expand the Use of the Secure Email Messaging System

Secure email provides an opportunity for digital communication that is familiar to many taxpayers. Within the IRS's Secure Email Messaging System (SEMS), messages and attachments are encrypted, but SEMS has limitations. To use SEMS, both the taxpayer and the IRS recipient must have secure messaging software installed on their computers and must exchange encryption certificates. There are also limits on file size that can be attached to emails, and some email software is incompatible with SEMS. International taxpayers are unable to use SEMS because they are unable to complete the authentication process. As a result, the IRS has limited options for secure email. It's only available to Large Business and International (LB&I) Division taxpayers during an audit and the Office of Chief Counsel (Counsel) to communicate with taxpayer representatives in docketed Tax Court cases. Counsel employees may exchange personally identifiable information and return information with taxpayers or their representatives during Tax Court litigation and letter ruling or closing agreement processes.<sup>10</sup> We recommend expanding the use of SEMS to other divisions. Most taxpayers use email in their everyday transactions with businesses, friends, and family as well as some sort of online portal or online account to communicate with their bank or financial institution.

### Documentation Upload Tool Serves as an Electronic Mailroom

On March 4, 2021, the IRS added the Documentation Upload Tool (DUT) for use in Wage and Investment (W&I) cases in the Return Integrity and Compliance Services function. It has also rolled the tool out to other IRS program areas such as Correspondence Exam, Voluntary Disclosure, and TAS.<sup>11</sup> The DUT platform allows taxpayers who prefer not to rely on mail or fax to upload documents requested during the examination in .pdf, .jpeg, .jpg, or .png file formats (with size of up to 5 MB per file) using a web browser.<sup>12</sup> Taxpayers can access DUT through a smartphone or computer device and upload pictures of documents and scanned documents.<sup>13</sup> DUT does not require the user to authenticate and thus is a valuable alternative for taxpayers who have trouble authenticating with the IRS's current programs. However, DUT is a one-way communication tool and does not allow the IRS to send a digital response. For many low-income taxpayers without printers, fax machines, or computers, DUT has been beneficial in providing documents in real time while speaking with the IRS. Until the IRS provides a better alternative,



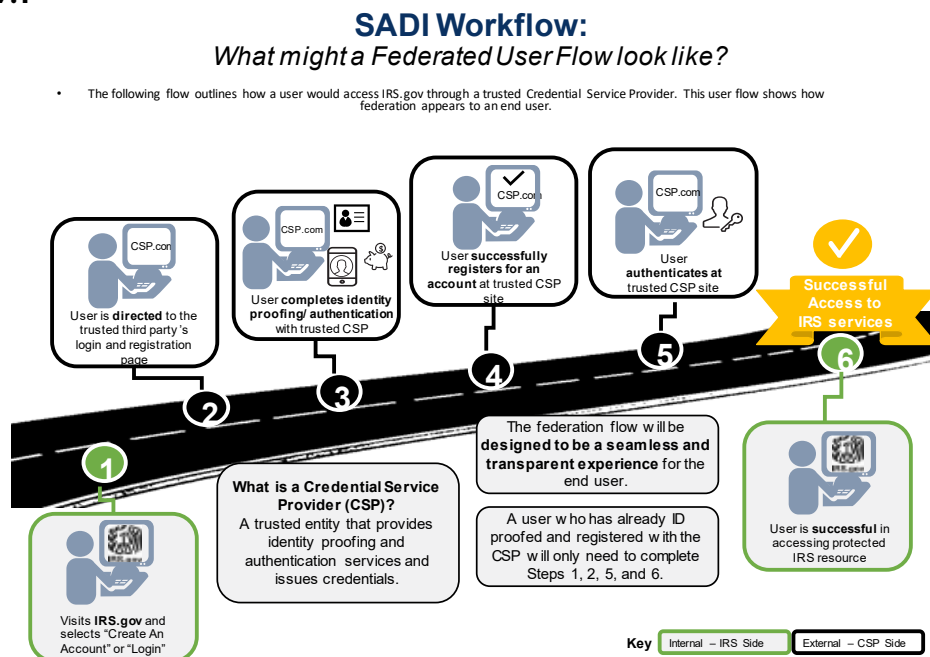
we recommend the IRS continue to expand this service to other functions within the agency to receive correspondence from taxpayers.

### Challenges in Accessing Secure IRS Digital Communication Services

As the custodian of sensitive financial information from hundreds of millions of taxpayers, we appreciate the need for the IRS to take precautions to protect taxpayer data. The IRS is addressing the challenges many taxpayers have in accessing secure digital communication services through the transition to the modernized Secure Access Digital Identity (SADI) platform. The SADI platform is the identity proofing and authentication solution for public-facing IRS applications that will replace the legacy Secure Access eAuthentication (Secure Access eAuth). This solution will address alignment to the updated National Institute of Standards and Technology (NIST) and Office of Management and Budget (OMB) policies.<sup>14</sup> Secure Access eAuth is based on tax return confirmation, financial record confirmation, and mobile phone confirmation. This process creates verification obstacles for taxpayers who want to use digital communication services but who are unbanked, lack financial accounts, are international taxpayers, or are Individual Taxpayer Identification Number (ITIN) holders.

Although the SADI authentication requirements are stricter than Secure Access eAuth, they also provide greater flexibility in the taxpayer identity proofing process. The IRS needs SADI to comply with more rigorous digital identity guidelines NIST imposed on federal agencies, but SADI may also help to improve taxpayer access to secure digital tools. SADI uses one or more Credential Service Providers (CSPs) to provide identity proofing and credential management services for the IRS. Taxpayers move seamlessly from IRS.gov to a CSP website to start the registration process. As shown in Figure 2.7.1, users upload requested identity information (*i.e.*, picture of driver's license, passport) and a "selfie," register for an account, and authenticate on the CSP's site before seamlessly returning to the requested IRS tool upon authentication. SADI will allow taxpayers to access applications across different agencies using a single set of credentials trusted by multiple parties. For example, users may have the option to use a single set of credentials for accessing their Social Security Administration and IRS accounts if both agencies support the same CSP.

**FIGURE 2.7.1**



## Success of the Secure Access Digital Identity Initiative Is Dependent on Credential Service Providers

Beginning in June 2021, the first application to use SADI for authentication was the Child Tax Credit Update Portal (CTCUP). The IRS created CTCUP as an online tool to allow taxpayers to make modifications in support of receiving or adjusting enrollment for Advance Child Tax Credit payments.<sup>15</sup> During the initial months of SADI implementation, the authentication success rate has been over 73 percent.<sup>16</sup> The IRS began migrating the primary taxpayer-facing applications (Get Transcript, Identity Protection PIN, Online Account, etc.) from Secure Access eAuth to SADI in November 2021.<sup>17</sup> These primary applications provide access to 23 transactions including access to account transcripts, the ability to make account payments, and communication through TDC.<sup>18</sup> The IRS is scheduled to transition the remaining applications, including e-Services Online Tools for Tax Professionals, to SADI in fiscal year (FY) 2022.<sup>19</sup> We will continue to monitor the SADI authentication success rate as it is rolled out to more digital communication tools.

While the legacy Secure Access eAuth platform does not rely on a CSP, SADI requires a third-party CSP to conduct identity proofing and credential management for the IRS. Currently, the only CSP servicing the IRS is ID.me, but the IRS is conducting vendor capability research to determine if CSP vendors have the basic requirements and capabilities (*e.g.*, in-person customer support, multi-language assistance, fraud detection) to integrate with the IRS to expand user coverage for underserved populations.<sup>20</sup> One of the lasting lessons from the pandemic is the importance of having redundant resources to avoid service disruptions. Relying on a single CSP to serve all U.S. taxpayers must be a short-term plan, not a long-term solution. We recommend the IRS partner with additional CSPs before the retirement of Secure Access eAuth and full implementation of SADI and not rely on a single CSP.

## Challenges Remain for International Taxpayers and Holders of Individual Taxpayer Identification Numbers Who Need Access to Digital Communication Services

One large, readily identifiable group of underserved taxpayers in the digital realm are foreign nationals who receive U.S.-sourced income. In 2019, over seven million Forms 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, were filed with the IRS.<sup>21</sup> The IRS currently does not have the technical capability to identity proof international taxpayers using a CSP at the appropriate levels required by NIST guidelines.<sup>22</sup> The IRS is conducting analysis and research of potential solutions in use by other countries and investigating options available from different CSPs to develop an international identity proofing capability, including leveraging passports to identity proof international taxpayers.<sup>23</sup>

Currently, ID.me is limited in its ability to identity proof and issue credentials to those without a Social Security number (SSN), such as ITIN holders. The IRS and ID.me are developing a process to verify that an ITIN is valid once ID.me has validated the user's identity documents including a passport or driver's license.<sup>24</sup> We recommend the IRS establish a process for taxpayers living outside the United States and taxpayers with ITINs to authenticate themselves in SADI or another platform that meets NIST requirements.<sup>25</sup>

## Taxpayer Digital Communication Services

Another way for taxpayers to communicate with the IRS securely is through the TDC platform. The TDC platform is more secure than email because the message content never leaves the secure TDC server and does not cross the open internet.<sup>26</sup> However, taxpayers can only use the TDC platform for certain IRS services, and it is not available to all taxpayers. The platform allows practitioners to submit Forms 2848, Power of Attorney and Declaration of Representative, and 8821, Tax Information Authorization, online via secure messaging using electronic signature methods. While TDC allows for online submissions to the IRS, processing procedures after IRS receipt are the same as for submissions received through all channels

except the Tax Pro Account, which establishes authorizations without generating an electronic Form 2848 or 8821 that requires processing.<sup>27</sup> Submission of Forms 2848 or 8821 through TDC provides the benefit of a confirmation of transmission but still relies on manual processing that has experienced a backlog since March 2020. The IRS has received over 408,000 authorization requests through TDC since implementation with over 392,000 processed; however, processing continues to take more than three weeks.<sup>28</sup>

As of November 2021, there have been over 190,000 invitations and 24,000 participants, few of whom were tax professionals.<sup>29</sup> About 26,500 taxpayers signed up through the Small Business/Self-Employed (SB/SE) Correspondence Exam and about 1,600 through SB/SE Automated Underreporter (AUR).<sup>30</sup> One of the biggest challenges to taxpayers accessing the TDC platform is the process to receive an invitation to use the platform and to authenticate identity. The IRS is addressing this challenge with the transition to the new SADI platform.

The primary service of the TDC platform is TDC Secure Messaging (TDC SM), available for specific compliance programs, that requires the IRS to invite taxpayers to participate in response to a notice or during a call with an IRS representative. TDC SM provides taxpayers with an option to digitally communicate with IRS employees in a secure manner and submit electronic documentation quickly and securely at their own convenience, allowing quicker resolution of their compliance issues. TDC SM is a foundational digital communication service to support the IRS modernization plan, reduce response times, and potentially reduce or eliminate the need for taxpayers to call or mail correspondence.<sup>31</sup>

Several IRS divisions launched applications on the TDC platform to provide methods for digital communication from taxpayers. SB/SE introduced TDC SM on a limited basis for Schedule A correspondence examinations in December 2016, has expanded TDC SM to all correspondence exam locations, and plans to complete expansion of TDC SM to all AUR campuses in 2022.<sup>32</sup> Correspondence exams and AUR functions account for 2.6 million communications annually, of which only a fraction are currently digital communications.<sup>33</sup> More than four years after launch, SB/SE has received about 109,000 digital messages through TDC SM.<sup>34</sup> For the tools to be useful, the IRS needs to promote taxpayer adoption and make these tools accessible and user-friendly to taxpayers. It's worth noting that in August 2020, SB/SE reported a satisfaction rate of over 80 percent from taxpayers who use TDC SM, and updates to the program have reduced audit time for both the IRS and taxpayers.<sup>35</sup> SB/SE Field Exam initiated a test in 2018, but expansion of TDC SM to Field Exam is not included in the Taxpayer Experience Strategy Roadmap.<sup>36</sup> To further leverage the benefits of TDC SM, we recommend the IRS expand TDC SM and secure email to Field Collection, Field Examination, and all correspondence exams.<sup>37</sup>

During 2021, the Tax-Exempt/Government Entities (TE/GE) Divisionwide expansion was prioritized and is currently in development.<sup>38</sup> The Independent Office of Appeals (Appeals) is testing the TDC SM on a pilot basis and plans to expand the pilot to all Appeals technical employees in FY 2022.<sup>39</sup> W&I is working to determine how TDC SM could be applied to the Error Resolution System to allow millions of taxpayers with delayed refunds to submit documentation to resolve some processing errors.<sup>40</sup>

The LB&I Examination function has experienced more message traffic than SB/SE. Within approximately one year of its April 2020 launch, LB&I Examination had sent more than 21,000 secure messages.<sup>41</sup> LB&I has introduced TDC SM in other areas as well, including Affordable Care Act Branded Prescription Drug Fee payers and Advanced Pricing Mutual Agreement. A digital-first application process for the Opportunity Zone program is also in development. The IRS can invite taxpayer representatives to use TDC SM, provided the IRS has received and processed an appropriate representation authorization.<sup>42</sup> Once the representative authenticates his or her identity (using the representative's own SSN), the representative is assigned a secure messaging mailbox to receive copies of communications between the IRS and the client.<sup>43</sup>

Taxpayer representatives and other tax professionals who pay close attention to the IRS may be aware of TDC SM, even if they have never used it. TAS recommends prioritizing extending TDC SM to the tax professional community. Practitioner adoption of TDC SM will help publicize the existence of this digital communication service. Taxpayers undergoing an SB/SE correspondence exam or responding to an AUR notice with little or no professional assistance may not read the notice closely enough to learn there is a new process for digitally exchanging documents. We recommend the IRS educate taxpayers about digital options such as TDC SM and permit taxpayers to request access in lieu of the current invite-only strategy.

### ***The IRS Needs Enhanced Electronic Signature Tools to Meet National Institute of Standards and Technology Requirements***

As part of its response to the pandemic, the IRS took steps to protect employees while still delivering mission-critical functions by minimizing the need for in-person contact and ensuring the ability to maintain critical operations within a remote working environment. To minimize in-person contact, the IRS issued temporary guidance allowing for the use of e-signatures and secure email of documents.<sup>44</sup> Beginning in March 2020, the IRS issued interim guidance<sup>45</sup> that allowed:

- The use of electronic or digital signatures to sign certain paper forms submitted for processing;
- The acceptance of images of signatures and digital signatures on documents related to the determination or collection of tax liability; and
- The use of email to receive or transmit encrypted documents to prove tax compliance.

This guidance was subsequently extended through October 31, 2023.<sup>46</sup>

The IRS does not capture data that allows it to measure how many submitted documents are wet-signed versus electronic; therefore, it cannot measure successful submissions by that metric.<sup>47</sup> However, the IRS monitored incident reporting to identify any data loss or privacy incidents related to the use of the temporary guidance and found none. The response of external stakeholders has been overwhelmingly positive;<sup>48</sup> however, taxpayers cannot sign all forms electronically, and the signature requirements for some forms vary depending on how the forms are submitted. For example, a taxpayer can sign Form 2848 electronically or with an image of a wet signature if the form is submitted online through the TDC portal. If the same form is submitted via e-Fax, the IRS requires wet signatures from the taxpayer and the representative and will reject a Form 2848 if it is submitted with an image of a wet signature or electronic signature.

Although these exceptions have been well received by both taxpayers and employees, they do not fully satisfy the NIST standards for electronic signatures or the Internal Revenue Manual guidelines.<sup>49</sup> Thus, rather than making these exceptions permanent, the IRS will extend them through 2023, pending the development of new tools that will satisfy the requirements for electronic signatures and secure document exchange.<sup>50</sup> We recommend the IRS expedite the development of these new tools.

### **Non-Authenticated and Authenticated Text Chat**

The IRS has capabilities for non-authenticated and authenticated text chat tools.<sup>51</sup> Generally, non-authenticated chat sessions allow for general inquiries supported by an automated virtual assistant. The Secure Access Virtual Assistant helps users via an automated interactive pop-up box with predefined guidance to help the user overcome most common errors taxpayers encounter during the Secure Access eAuth identity proofing process.<sup>52</sup>

Between November 2020 and October 2021, over 173,000 taxpayers interacted with the Virtual Assistant and successfully registered with Secure Access eAuth, resulting in an estimated savings of more than \$11.3 million in avoided labor costs of providing phone service on the IRS toll-free lines.<sup>53</sup> The IRS's Taxpayer Experience Strategy Roadmap includes a project for expanding the use of virtual assistants, but the project is not fully

funded and does not have a scheduled implementation date. We recommend the IRS prioritize adding predefined virtual assistants to non-authenticated chat sessions for more digital communication services, such as helping taxpayers determine the best way to resolve a tax liability, including collection alternatives such as offers in compromise, installment agreements, and currently not collectible status.

Text chats help taxpayers get answers to their questions and resolve their tax issues without needing to call the IRS. Text chat provides general assistance to taxpayers who receive certain Automated Collection System (ACS) letters, visit certain IRS.gov web pages, or attempt to establish an installment agreement but were routed out of the Online Payment Agreement application. All 19 ACS call sites (including bilingual sites) are using text chat.<sup>54</sup> Authenticated text chat allows taxpayers with collection questions to digitally submit documents such as installment agreement forms and delinquent returns. Text chat can be used to exchange text messages, files, web pages, and other information to address taxpayer queries, both proactively and reactively. For a taxpayer to digitally transmit documents to the IRS, the taxpayer must self-authenticate through SADI using a link the text chat assistor provides. Once authenticated, taxpayers are routed back to the assistor on the TDC platform that allows for secure message and document exchange. If the taxpayer fails authentication, he or she can continue with unauthenticated text chat.<sup>55</sup>

ACS saw a record high of over 85,600 chats in March 2021.<sup>56</sup> Since it was launched in 2017, there have been over 954,000 chat sessions, with 82 percent discussing payments and 15 percent addressing online payment agreement topics.<sup>57</sup> The average ACS chat handle time is between six minutes and about 23 minutes with an average wait time of 35 seconds.<sup>58</sup> Seventy-three percent of unauthenticated and 77 percent of authenticated chats led to a resolution of the issue.<sup>59</sup> This is an example of the benefits of digital communications.

**FIGURE 2.7.2, Performance Metrics for ACS Unauthenticated and Authenticated Text Chat<sup>60</sup>**

Performance Metrics	FY 2018	FY 2019	FY 2020	FY 2021
<b>Total Chats Connected</b>	29,836	98,571	328,815	745,314
Unauthenticated Chat	29,333	94,225	320,584	736,518
Authenticated Chat (Added June 2019)	N/A	4,346	8,231	8,796
<b>Average Wait Time (minutes, seconds)</b>	36s	1m, 31s	35s	22s
<b>Average Handle Time (minutes, seconds)</b>	7m, 42s	6m, 54s	6m, 48s	6m, 16s
Unauthenticated Chat (minutes/seconds)	7m, 42s	6m, 48s	6m, 13s	6m, 5s
Authenticated Chat	N/A	15m, 23s	21m, 50s	26m, 57s
<b>Percent Abandoned</b>	1.70%	2.40%	1.30%	1.06%
<b>Resolution Rate</b>	71%	76%	75%	73%
Unauthenticated Chat	71%	76%	75%	73%
Authenticated Chat	N/A	83%	75%	77%
<b>Customer Satisfaction (Out of 5 Stars)</b>	4	4	4.1	4.2

As shown in Figure 2.7.2, more than 73 percent of users resolved their issue using text chat during FY 2021, and they rated the tool favorably, with a customer satisfaction rate of 4.2 out of 5.<sup>61</sup> Text chat has shown to be an efficient digital communication service provided by the IRS. SB/SE plans to introduce an unauthenticated text chat tool in January 2022.<sup>62</sup> A virtual assistant will help answer questions about issues such as one-time payments, notices, and frequently asked questions.<sup>63</sup> We recommend the IRS expand



non-authenticated and authenticated Text Chat (with Virtual Assistant) beyond ACS to all taxpayer-facing functions and transactional tools.

### **For Some Taxpayers, Digital Access Depends on Virtual Face-to-Face Service Delivery and Self-Service Kiosks**

Virtual face-to-face videoconference technology is another digital tool that allows taxpayers and representatives to see and hear an IRS representative and screen-share documents without being physically present.<sup>64</sup> The Taxpayer First Act Report to Congress includes plans to expand virtual face-to-face capabilities throughout the agency.<sup>65</sup> In January 2020, the IRS tested Web Service Delivery (WebSD), which is a digital communication tool that allows the IRS to offer virtual Taxpayer Assistance Center (TAC) appointments to taxpayers from their home or office.<sup>66</sup> Due to COVID-19, the IRS did not expand the virtual face-to-face options during 2021.<sup>67</sup>

The following IRS organizations have incorporated videoconferencing technology into their operations:

- **W&I Field Assistance:** W&I Field Assistance offers Virtual Service Delivery (VSD) as a face-to-face service option at about 30 community partner locations such as nonprofit offices and state and local government buildings.<sup>68</sup> However, VSD generally relies on old technology that only enables two-way communications from dedicated sites.<sup>69</sup>
- **Appeals:** Appeals offers technology for virtual face-to-face conferences between taxpayers, representatives, and Appeals Technical Employees (ATEs). ATEs must offer and conduct a virtual conference if the taxpayer or taxpayer's representative agrees.<sup>70</sup>
- **SB/SE Field and Specialty Exam:** SB/SE has issued guidance setting forth the guidelines for Field and Specialty Exam employees to use videoconferencing technology to interact with taxpayers.<sup>71</sup>
- **LB&I:** LB&I announced that it will accept all requests to meet virtually with government employees, extending a practice established during the pandemic, to offer an alternative to in-person meetings or telephone discussions.<sup>72</sup>
- **Counsel:** Counsel and the U.S. Tax Court are conducting pre-trial conferences and trials using videoconferencing technology.<sup>73</sup>
- **TAS:** TAS offers technology for virtual face-to-face meetings between other government employees, external stakeholders (e.g., congressional offices, Taxpayer Advocacy Panel members, Low Income Taxpayer Clinics), and TAS employees. Many TAS employees have been conducting virtual face-to-face outreach events, a practice that was established during the pandemic as an alternative to in-person outreach events. TAS continues to explore expanding virtual face-to-face meeting options for its employees to be able to meet with taxpayers and their representatives in the future.

The IRS should enable taxpayers to schedule a video chat with an IRS employee using a computer, tablet, or mobile phone. The IRS should also resume its plans to expand the availability of digital kiosks that provide the equipment and technology for taxpayers to interact virtually with the IRS in centralized sites such as TACs and other federal buildings, especially in areas without broadband access. More than three-quarters of taxpayers agree that it is important for the IRS to provide office locations with an onsite IRS representative.<sup>74</sup> Kiosks or similar technology could help meet that need (at least virtually) with the ability to connect to a live assistor, facilitate in-person identity-proofing for online accounts, enable the printing of transcripts and notices, and permit credit card payments. In December 2021, the IRS is scheduled to add capability to self-service kiosks to respond to levies and summons notices.<sup>75</sup> When determining how much the agency expands kiosks, the IRS will consider return-on-investment analysis, budget considerations, and dialogue with IRS partners.<sup>76</sup> We recommend the IRS prioritize its focus on expansion of virtual face-to-face and self-service kiosks or similar technology.



## The IRS Must Create Applications Using Mobile-First Design Principles

As the IRS releases digital service options, it must consider how taxpayers will access such services. In 2019, about 37 percent of U.S. adults mostly used a smartphone when accessing the internet.<sup>77</sup> In addition, about 17 percent of U.S. adults are now “smartphone only” internet users (*i.e.*, they own a smartphone and do not subscribe to broadband internet service at home).<sup>78</sup>

Several digital applications are both mobile-ready and mobile-optimized:<sup>79</sup>

- Direct Pay;
- Online Account;
- Tax Exempt Organization Search;
- Where’s My Amended Return?; and
- Free File Lookup Tool.

While not all IRS digital applications are either mobile-ready or mobile-optimized,<sup>80</sup> the IRS is making progress. In the National Taxpayer Advocate’s 2020 Annual Report to Congress, the IRS agreed with a TAS recommendation to continue to develop digital service tools that are mobile-ready. The IRS response included, “Consistent with the 21st Century Integrated Digital Experience Act legislation, the IRS is already obligated to develop new tools and services into mobile-ready experiences subject to legislative timelines and funding or other resource constraints. While we are actively working toward this goal, this activity will be ongoing with no final implementation date.”<sup>81</sup>

The IRS began work in November 2021 to bring existing features within Online Account into full alignment with web design standards, and the IRS anticipates further transition of applications to mobile-ready or mobile-optimized status as part of the IRS response to the 21st Century Integrated Digital Experience Act, though none are scheduled. In addition, the Taxpayer Experience Strategy of the Taxpayer First Act Report to Congress aims to make all applications mobile-ready.<sup>82</sup>

To improve the adoption rate of digital communication services, we recommend the IRS prioritize updating existing applications to be mobile-ready, so that all web content and assets are accessible, legible, and usable across all devices.

**To improve the adoption rate of digital communication services, we recommend the IRS prioritize updating existing applications to be mobile-ready, so that all web content and assets are accessible, legible, and usable across all devices.**

## CONCLUSION AND RECOMMENDATIONS

The IRS has faced unprecedented challenges in the past year that have created an urgency to provide easy-to-use digital communication services while simultaneously facing budget and human resource limitations. To address these challenges and to improve productivity and efficiency, digital communication tools are vital for the IRS to ably service taxpayers. Taxpayers who wish to use digital communication services should have expanded access to information and transactional interactions with IRS.

As the IRS implements new digital communication services and enhances existing technologies, it is critical that the IRS integrate them into an omnichannel service environment and support all taxpayers who choose to use them, as well as taxpayers who prefer non-digital communication. The IRS should prioritize outreach

and education about digital communication tools and help taxpayers find and use them. Taxpayers need digital options to ensure their *right to quality service* through their preferred method. When used effectively, these technologies can profoundly affect IRS interactions for taxpayers who cannot or do not want to rely on phone and mail to communicate about a tax issue. Digital communication tools also benefit the IRS by decreasing demand for manual processing and phone lines, thereby reducing labor costs.

### Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Prioritize and expand digital communications to accelerate deployment of taxpayer-facing features by three months in the Taxpayer Experience Roadmap.
2. Develop expanded transactional data-based metrics to determine if taxpayers are completing transactions successfully when choosing a digital channel for service.
3. Accelerate permanent implementation allowing for the use of e-signatures and secure email of documents by end of FY 2022.
4. Expedite the development of new tools that will satisfy the requirements for electronic signatures and secure document exchange by end of FY 2022.
5. Continue to expand DUT service to other functions within the agency to receive correspondence from taxpayers, including issue resolution documentation from taxpayers for math errors by end of FY 2022 and additional audit, examination, and AUR notices by end of FY 2023.
6. Educate taxpayers about digital options such as TDC SM and permit taxpayers to request access rather than the current invite-only strategy by end of Quarter 1, FY 2023.
7. Expedite the onboarding of additional CSPs before the retirement of eAuth and full implementation of SADI and do not rely on a single CSP.
8. Establish a process for taxpayers living outside the United States and taxpayers with ITINs to authenticate themselves in SADI or another platform that meets NIST requirements by end of FY 2022.
9. Prioritize adding predefined virtual assistants to non-authenticated chat sessions for more digital communication services, such as helping them determine the best way to resolve a tax liability, including collection alternatives such as offers in compromise, installment agreements, and currently not collectible status by end of FY 2022.
10. Expand non-authenticated and authenticated Text Chat (with Virtual Assistant) beyond ACS to all taxpayer-facing functions and transactional tools and incorporate expansion plans into Web Services planning and the Taxpayer Experience strategy.
11. Prioritize and focus on expansion of virtual face-to-face and self-service kiosks or similar technology to enable taxpayers with limited to no broadband access to interact virtually with the IRS by end of Quarter 1, FY 2023.
12. Make all existing applications mobile-ready so that all web content and assets are accessible, legible, and usable across all devices. Going forward, standardize the application development process and testing to include mobile-ready access into newly developed applications by end of FY 2022.

### RESPONSIBLE OFFICIALS

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Darren Guillot, Commissioner, Collection and Operations Support, Small Business/Self-Employed Division

De Lon Harris, Commissioner, Examination and Operations Support, Small Business/Self-Employed Division

Karen Howard, Director, Office of Online Services

Andrew Keyso, Chief, IRS Independent Office of Appeals

Heather Maloy, Director, IRS Next Office

Nancy Sieger, Chief Information Officer

## IRS COMMENTS

The IRS continues to increase digital communications and services, despite funding barriers. Digital options for taxpayers, tax professionals, and IRS employees are fundamental to effective tax administration.

We are working toward a future where taxpayers who wish to do so may transact much of their business with the IRS digitally, including through their mobile devices. This includes online accounts, secure two-way communications, text chat, expanded ability to check the status of returns and payments, and more.

One example of recent progress is our Documentation Upload Tool (DUT), which gives taxpayers the ability to securely send certain compliance-related documents to us electronically from their computer or smartphone. In 2021, we rolled out this tool for certain cases in the Return Information Control System (RICS) and for use in correspondence examinations. The Report acknowledges the significant benefit this tool provides to low-income taxpayers who may not have easy access to other communication tools.

Enhanced identity verification is critical to protecting taxpayer information and is a key agency priority to ensure compliance with all legal requirements. In FY 2021, we made substantial progress in this area. We deployed the Secure Access Digital Identity (SADI) platform to authenticate taxpayers for access to the Child Tax Credit Update Portal (CTCUP). After the successful deployment of SADI in June, the IRS expedited plans and successfully migrated 16 primary online applications from the legacy Secure Access platform to SADI. We believe our continuing FY 2022 efforts to migrate other applications to this platform will greatly facilitate taxpayer access to our digital services.

TDC, which allows taxpayers to exchange information and messages with us securely, continues to expand. It is now offered in the majority of correspondence examinations handled by the Small Business/Self Employed (SB/SE) operating division. In FY 2022, we plan to use TDC at all our Automated Underreporter (AUR) campuses, as well as expand its use in Appeals and the Tax-Exempt/Government Entities Division. This year, we launched a portal that allows practitioners to submit Forms 2848, Power of Attorney and Declaration of Representative, and 8821, Tax Information Authorization, online via secure messaging using electronic signatures. We are working to expand the portal's functionality.

In 2020, in response to the COVID-19 pandemic, the IRS implemented temporary deviations that allow taxpayers and representatives to electronically sign and submit specific forms. This year, after receiving positive feedback from our employees and from taxpayers and their representatives, we expanded and extended those flexibilities until late 2023.

Taxpayers expect and deserve digital services that are tailored to their needs. Expanding our digital services is one of our top priorities, and we expect to continue making significant, transformative progress in this area in the coming years. Because not all taxpayers prefer to communicate with us electronically, the IRS will continue to provide assistance through a variety of channels – including mail, web, telephone, and in person. We intend to integrate those channels with expanded digital options to seamlessly guide taxpayers to the resources that will best resolve their issue.

## TAXPAYER ADVOCATE SERVICE COMMENTS

The National Taxpayer Advocate recognizes that the IRS has made progress during the past year toward expanding digital communication tools for taxpayers. Tools such as DUT, TDC, and text chat functions provide opportunities for taxpayers to interact with the IRS efficiently and effectively. SADI provides an opportunity for taxpayers to pass the identity proofing process and obtain credentials that help protect the integrity of taxpayers' personal information. Our recommendations reflect the importance of expeditiously implementing new digital communication tools, enhancing existing tools, and increasing taxpayers' access to them.

As the IRS correctly states, taxpayers expect and deserve digital services that are tailored to their needs. Taxpayers who wish to interact digitally with the IRS should have tools at their disposal and be able to access those tools through a mobile device. The IRS must also maintain mail, telephone, and in-person service options for those who prefer not to communicate digitally.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Prioritize and expand digital communications to expedite the deployment of taxpayer-facing features by three months from the current Taxpayer Experience Roadmap schedule.
2. Develop expanded transactional data-based metrics to determine if taxpayers are completing transactions successfully when choosing a digital channel for service.
3. Develop new tools that will satisfy the requirements for electronic signatures and secure document exchange by end of FY 2022.
4. Continue to expand DUT service to other functions within the agency to receive correspondence from taxpayers, including issue resolution documentation from taxpayers for math errors by end of FY 2022 and additional correspondence audit, examination, and AUR notices by end of FY 2023.
5. Educate taxpayers about digital options such as TDC SM and permit taxpayers to request access in lieu of the current invite-only strategy by end of Quarter 1, FY 2023.
6. Partner with additional CSPs before the retirement of Secure Access eAuth and full implementation of SADI and do not rely on a single CSP.
7. Establish a process for taxpayers living outside the United States and taxpayers with ITINs to authenticate their identities in SADI or another platform that meets NIST requirements by December 31, 2022.
8. Prioritize adding predefined virtual assistants to non-authenticated chat sessions for more digital communication services, such as helping taxpayers determine the best way to resolve a tax liability, including collection alternatives such as offers in compromise, installment agreements, and currently not collectible status by end of FY 2022.
9. Expand non-authenticated and authenticated Text Chat (with Virtual Assistant) beyond ACS to all taxpayer-facing functions and transactional tools and incorporate expansion plans into Web Services planning and the Taxpayer Experience strategy.
10. Prioritize and focus on expansion of virtual face-to-face and self-service kiosks or similar technology to enable taxpayers with limited to no broadband access to interact virtually with the IRS by end of Quarter 1, FY 2023.

11. Make all existing applications mobile-ready so that all web content and assets are accessible, viewable, and usable across all devices. Going forward, standardize the application development process and testing to include mobile-ready access into newly developed applications by end of FY 2022.

## Endnotes

- 1 See Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*, *supra*; Most Serious Problem: *Filing Season Delays: Millions of Taxpayers Experienced Difficulties and Challenges in the 2021 Filing Season*, *supra*.
- 2 See Most Serious Problem: *Filing Season Delays: Millions of Taxpayers Experienced Difficulties and Challenges in the 2021 Filing Season*, *supra*.
- 3 See Most Serious Problem: *IRS Recruitment and Hiring: The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration*, *supra*.
- 4 See IRS, Taxpayer Bill of Rights, <https://www.irs.gov/taxpayer-bill-of-rights>. See also IRC § 7803(a)(3)(B).
- 5 See IRS, Accelerating Digital Communications to Solve Pandemic Challenges and Improve the Taxpayer Experience, <https://www.irs.gov/about-irs/accelerating-digital-communications-to-solve-pandemic-challenges-and-improve-the-taxpayer-experience> (last visited Dec. 20, 2021).
- 6 IRS Filing Season Report, Individual Master File (IMF) Total IMF Returns Received (Nov. 5, 2021); U.S. Census Bureau, American Community Survey, 2019 ACS 1 Year Estimates, Table S0101, Ages 18-74; derived as “age 18 and over” minus “age 75 and over.” IRS, Filing Season Statistics Report (Dec. 18, 2021).
- 7 Internal Revenue Manual (IRM) 10.5.1.6.8.1, Emails to Taxpayers and Representatives (Dec. 31, 2020).
- 8 See, e.g., Digitalization, Research and Execution, Enterprise Program Management Office PowerPoint to TAS.
- 9 See Most Serious Problem: *Online Accounts: IRS Online Accounts Do Not Have Sufficient Functionality and Integration With Existing Tools to Meet the Needs of Taxpayers and Practitioners*, *supra*.
- 10 LB&I Secure Email With Taxpayers/Representatives Step-by-Step Instructions for Outlook 2010 Users; IRS Office of Chief Counsel Notice, CC-2020-002 (Oct. 19, 2019).
- 11 Digitalization, Research and Execution, Enterprise Program Management Office PowerPoint to TAS.
- 12 Servicewide Electronic Research Program (SERP) Alert 21A0134, Documentation Upload Tool (DUT) Pilot Implementation in RIVO.
- 13 SERP Alert 21A0316, Documentation Upload Tool (DUT) Implementation for Correspondence.
- 14 NIST, Special Publication 800-63-3, *Digital Identity Guidelines* (June 2017). See also OMB, M-19-17, *Enabling Mission Delivery Through Improved Identity, Credential, and Access Management (ICAM) Policy 2*, 7 (May 21, 2019).
- 15 WebApps Governance Board Meeting (June 9, 2021). The portal allows taxpayers to view eligibility; unenroll from advance payments; display payment information; update mailing address; update bank account; self-report changes to income, marital status, and qualifying children; reenroll for advance payments; limit user changes; display history of user changes; and provides multilingual compatibility.
- 16 SADI Group 1 Business Readiness Executive Update 13 (Nov. 4, 2021). This rate accounts for users who were presented with a path forward in the identity verification process, while excluding users who opted not to proceed and instances of estimated fraud.
- 17 See IR-2021-228, IRS Unveils New Online Identity Verification Process for Accessing Self-Help Tools (Nov. 17, 2021), <https://www.irs.gov/newsroom/irs-unveils-new-online-identity-verification-process-for-accessing-self-help-tools>.
- 18 SADI Group 1 Business Readiness Executive Update 21 (Nov. 4, 2021).
- 19 IRS response to TAS information request (Sept. 13, 2021).
- 20 *Id.*
- 21 IRS, Statistics of Income Division, Individuals, Withholding on Foreign Recipients of U.S. Income (Oct. 2019).
- 22 IRS response to TAS information request (Sept. 13, 2021).
- 23 *Id.*
- 24 *Id.*
- 25 See also Taxpayer Advocacy Panel 2020 Annual Report 62 (recommending the IRS should establish a system whereby overseas taxpayers can communicate, file documents, and conduct other interactions with the IRS via electronic means, such as email).
- 26 LB&I TDC Secure File Sharing and Secure Messaging (SFS-SM) (Aug. 18, 2020).
- 27 During the first four months after launch, only about 2,000 Power of Attorney and Declaration of Representative and Tax Information Authorization forms were successfully completed through the Tax Pro Account. For more information about the Tax Pro Account, see Most Serious Problem: *Online Accounts: IRS Online Accounts Do Not Have Sufficient Functionality and Integration With Existing Tools to Meet the Needs of Taxpayers and Practitioners*, *supra*.
- 28 Taxpayer First Act 2302 TDC Dashboard (Nov. 30, 2021).
- 29 IRS, Pub. 5316, Internal Revenue Service Advisory Council Public Report 96 (Nov. 2021).
- 30 Totals from years 2017 to 2021. Email from Office of Online Services (OLS) (Dec. 13, 2021).
- 31 Memorandum, Appeals Taxpayer Digital Communications Secure Messaging Pilot, by Director, Case and Operations Support, IRS Independent Office of Appeals (June 4, 2021).
- 32 SB/SE TDC for Exam: 2021 - Monthly Update Call Notes (Sept. 9, 2021).
- 33 WebApps Governance Board Meeting 22 (June 9, 2021).
- 34 OLS, TDC SB/SE Exam Dashboard & TDC AUR Dashboard (Nov. 29, 2021).
- 35 Nathan J. Richman, *IRS Secure Messaging Pilot Coming to More Campuses*, TAX NOTES (Aug. 5, 2020).

## Most Serious Problem #7: Digital Communications

- 36 The roadmap mentions adding Robotic Process Automation (RPA) and states the software will act as a virtual assistant. The only programs named in the roadmap for adding RPA are Monitoring Offers in Compromise, Certified Professional Employer Organizations, and A6020b, an automated program for Business Masterfile taxpayers who do not file timely. IRS, Pub. 5565, Taxpayer Experience Strategy Roadmap, FY 2022-FY 2025 Roadmap (Sept. 30, 2021).
- 37 See Most Serious Problem: *Correspondence Audits: Low-Income Taxpayers Encounter Communication Barriers That Hinder Audit Resolution, Leading to Increased Burdens and Downstream Consequences for Taxpayers, the IRS, TAS, and the Tax Court*, *infra*.
- 38 TDC Executive Roundtable Meeting (Aug. 19, 2021).
- 39 IRS, Pub. 5316, Internal Revenue Service Advisory Council Public Report 23 (Nov. 2021).
- 40 TDC Executive Roundtable Meeting (Aug. 19, 2021).
- 41 WebApps Governance Board Meeting 22 (June 9, 2021).
- 42 SB/SE, LB&I, TE/GE, and Appeals are currently conducting TDC pilots. Meeting between TAS and OLS (Sept. 18, 2020). TAS conducted a TDC pilot in 2017 and 2018. LB&I has actively used the TDC Secure File Sharing-Secure Messaging program since May 15, 2020, and is considering ways to expand such usage. IRS response to TAS information request (Oct. 6, 2020).
- 43 Nathan J. Richman, *IRS Secure Messaging Pilot Coming to More Campuses*, TAX NOTES (Aug. 5, 2020).
- 44 Sunita Lough, Memorandum for All Services and Enforcement Employees (Mar. 27, 2020).
- 45 *Id.*
- 46 Douglas W. O'Donnell, Memorandum for All Services and Enforcement Employees (Nov. 18, 2021).
- 47 IRS response to TAS information request (Sept. 13, 2021).
- 48 *Id.*
- 49 IRM 10.10.1, IRS Electronic Signature (e-signature) Program (Dec. 3, 2019).
- 50 IRS response to TAS information request (Sept. 13, 2021).
- 51 PGLD Identity Assurance, Secure Access Virtual Assistant, Billable Sessions Usage and Throttling (Oct. 10, 2021).
- 52 See IRS, FAQs about e-Services and Secure Access, <https://www.irs.gov/individuals/faqs-about-e-services-and-secure-access> (last visited Dec. 20, 2021).
- 53 PGLD Identity Assurance, Secure Access Virtual Assistant, Billable Sessions Usage and Throttling (Oct. 10, 2021).
- 54 See IRS, Accelerating Digital Communications to Solve Pandemic Challenges and Improve the Taxpayer Experience, <https://www.irs.gov/about-irs/accelerating-digital-communications-to-solve-pandemic-challenges-and-improve-the-taxpayer-experience> (last visited Dec. 20, 2021).
- 55 Director, Collection Inventory Delivery and Selection, Interim Guidance on ACS Text Chat Pilot (May 22, 2019).
- 56 WebApps Governance Board Meeting (June 9, 2021).
- 57 See IRS, Accelerating Digital Communications to Solve Pandemic Challenges and Improve the Taxpayer Experience, <https://www.irs.gov/about-irs/accelerating-digital-communications-to-solve-pandemic-challenges-and-improve-the-taxpayer-experience> (last visited Dec. 20, 2021).
- 58 *Id.*
- 59 IRS response to TAS information request (Nov. 8, 2021). Authenticated chats involve more individualized interactions and generally are more complex, contributing to the longer handle times.
- 60 *Id.*
- 61 See IRS, Accelerating Digital Communications to Solve Pandemic Challenges and Improve the Taxpayer Experience, <https://www.irs.gov/about-irs/accelerating-digital-communications-to-solve-pandemic-challenges-and-improve-the-taxpayer-experience> (last visited Dec. 20, 2021).
- 62 IRS response to TAS information request (Nov. 29, 2021).
- 63 *Id.*
- 64 IRS, Appeals Virtual Conferences, <https://www.irs.gov/appeals/appeals-virtual-conferences-webex> (last visited Dec. 20, 2021).
- 65 IRS, Pub. 5426, Taxpayer First Act Report to Congress 65 (Jan. 2021).
- 66 IRS response to TAS information request (Sept. 8, 2021).
- 67 *Id.*
- 68 TAS also has three operational VSD locations (located in Kenai, AK; Tampa, FL; and Spokane, WA) to interact with taxpayers. TAS, Contact Us, <https://taxpayeradvocate.irs.gov/contact-us> (last visited Dec. 20, 2021); IRM 13.1.16.8, Sources of TAS Cases and Initial Intake Actions (Aug. 14, 2020).
- 69 IRS responses to TAS information requests (Oct. 13, 2020; Oct. 27, 2020); Treasury Inspector General for Tax Administration, Ref. No. 2019-IE-R002, *Although Virtual Face-to-Face Service Shows Promise, Few Taxpayers Use It* (Nov. 13, 2018); IRM 4.21.3.4.2.3, Virtual Services Delivery (VSD) (Oct. 1, 2018).
- 70 IRS, Appeals Virtual Conferences, <https://www.irs.gov/appeals/appeals-virtual-conferences-webex> (last visited Dec. 20, 2021); Interim Guidance AP-08-0321-0009, Memorandum for Required Use of Virtual Conferences (Mar. 22, 2021). This guidance requires ATEs to offer and conduct a virtual conference if the taxpayer and representative agree.
- 71 Director, Examination Field and Campus Policy, SB/SE, Interim Guidance on WebEx for Taxpayer-Facing Interactions (Sept. 2020).
- 72 Memorandum from Nikole C. Flax, Commissioner, IRS LB&I Division (Oct. 18, 2021).
- 73 U.S. Tax Court, Press Release (May 29, 2020).
- 74 IRS, Pub. 5296, Comprehensive Taxpayer Attitude Survey (CTAS) 2020 Executive Report 10 (Apr. 2021).
- 75 IRS, Pub. 5565, Taxpayer Experience Strategy Roadmap, FY 2022-FY 2025 Roadmap 23 (Sept. 30, 2021).
- 76 IRS response to TAS information request (Oct. 13, 2020).
- 77 Monica Anderson, Pew Research Center, *Mobile Technology and Home Broadband 2019*, at 2-4 (June 13, 2019).
- 78 *Id.*
- 79 IRS response to TAS information request (Oct. 13, 2020).
- 80 "Mobile-ready" means that some layouts, content, and elements resize to mobile viewports and that the application is largely usable in those circumstances with only (relatively) minor inconveniences. "Mobile-optimized" means all digital applications would react for mobile viewports and follow the standards included in the IRS Online Design Guide based upon the U.S. Web Design System. IRS response to TAS information request (Oct. 13, 2020).
- 81 National Taxpayer Advocate Fiscal Year 2022 Objectives Report to Congress 90 (Appendix 1: *IRS Responses to Administrative Recommendations Proposed in the National Taxpayer Advocate's 2020 Annual Report to Congress*).
- 82 IRS response to TAS information request (Oct. 13, 2020).



## E-FILING BARRIERS: Electronic Filing Barriers Increase Taxpayer Burden, Cause Processing Delays, and Waste IRS Resources

### WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

The inability to electronically file (e-file) tax forms, schedules, attachments, and other documents negatively impacts the timeliness of processing taxpayers' returns. Paper returns require manual processing, which leads to processing delays and potential transcription errors. In contrast, e-filing significantly benefits both taxpayers and the IRS. Taxpayers benefit from reduced transcription errors and quicker return processing and refund turnaround times. The IRS benefits because it takes fewer resources to process e-filed returns, which frees up much-needed resources to perform other filing season processing tasks, including processing paper returns filed by taxpayers who do not have the ability or desire to e-file. The IRS should remove barriers and provide all taxpayers the option to e-file their returns to lessen the delays and burdens associated with paper returns and to free up resources for those taxpayers who file by paper.

### EXPLANATION OF THE PROBLEM

The COVID-19 pandemic reinforced the critical need for the IRS to further increase the electronic filing (e-filing) of tax forms, schedules, attachments, and other documents. During the pandemic, paper filers were in limbo for an extended period of time awaiting the processing of their returns and receipt of any refunds. Conversely, taxpayers who e-filed experienced significantly less burden because their tax returns did not sit waiting to be extracted and processed.<sup>1</sup>

During the 2021 filing season, about 91 percent of individual returns and about 69 percent of business returns were e-filed through October 23, 2021.<sup>2</sup> While e-filing significantly benefits both taxpayers and the IRS, the IRS still receives a significant number of paper-filed returns. The IRS should remove barriers and provide all taxpayers the option to e-file their returns to lessen the delays and burdens associated with paper returns. We have identified a number of potential reasons some taxpayers continue to paper file:

- A significant number of commonly used forms can only be paper-filed;
- E-file rejections lead to paper filing;
- Inability to e-file returns with attachments;
- Inability to e-file returns with overrides of fields prepopulated by software; and
- Taxpayer preference to file by paper.

In addition, the IRS has not publicized an updated long-term e-file rate goal. As the IRS works to further increase the rate of e-filing, it should also strive to improve the processing of paper returns. Technology, such as optical character recognition (OCR) and 2-D barcoding, is available that would allow the IRS to scan paper returns prepared with software and capture the data accurately and efficiently.

## ANALYSIS

During 2021, about 91 percent of individual returns and about 69 percent of business returns received by the IRS were e-filed.<sup>3</sup> While the individual e-file rate is impressive, the number of paper-filed tax forms and other documents is also significant. In 2021, approximately 16 million individual tax returns were filed by paper.<sup>4</sup> The e-file rate for business returns is significantly lower than the individual e-file rate; the IRS received about 17.7 million paper-filed business returns in 2021.<sup>5</sup> This significant number of paper filings is a drain on IRS resources and is likely to cause negative impact to the entire filing season processing, which increases taxpayer burden resulting from processing delays and inaccurate transcription. The IRS must continue to take steps to increase e-filing options for both individual and business taxpayers who prefer to e-file.<sup>6</sup>

The method a taxpayer or preparer chooses to submit a tax return can have significant consequences. Both taxpayers and the IRS benefit from e-filing for a variety of reasons, including:

- *Taxpayer Convenience:* The taxpayer or preparer can typically accomplish the act of e-filing within a few minutes while sitting in front of a computer. The convenience of e-filing enables the taxpayer to avoid the additional steps associated with paper filing: printing out the document, placing it in an envelope, and in many cases, visiting the post office to purchase the appropriate mail delivery services (*e.g.*, certified, return receipt).
- *Faster Return Processing and Refund Issuance:* While the IRS accepts an e-filed return within hours, a paper-filed return can take days to arrive at an IRS facility. It can also take many more days for the IRS to open the mailed envelope and transcribe the document. At times during the pandemic, it took the IRS more than six months to process the return and issue any applicable refund. E-filing also allows continuous processing, even when IRS offices are closed due to weather or safety conditions.
- *Accurate Recording of Tax Return Information and Avoidance of Transcription Errors:* When a taxpayer e-files a tax return, the IRS receives the tax return information in an electronic format ready for processing. When the IRS receives a paper return by mail, it generally must manually enter or transcribe certain data included on the document. Transcription errors can impose significant burden on both taxpayers and the IRS. Such errors often lead to unnecessary compliance actions and result in wasted time and resources for both parties. During 2021 through the end of August, the IRS's quality reviews measured transcription accuracy rates of 78 percent for individual returns and 87 percent for business returns.<sup>7</sup> For individuals, that means roughly one out of every four returns had a transcription error that could trigger an unwarranted compliance action or an erroneous refund that the IRS might later seek to recover.
- *Substantially Reduced Processing Costs:* The cost savings associated with e-filing are substantial for the IRS. Processing a paper-filed return is significantly more expensive for the IRS than processing an e-filed return due to the costs associated with training, recruiting, and staffing for manual data transcription. In fact, the cost to process a paper-filed Form 1040 in fiscal year (FY) 2020 was \$15.21, which is substantially higher than the \$0.36 cost to process an e-filed return.<sup>8</sup>

## A Significant Number of IRS Forms Require Paper Filing

Increasing the availability and rate of electronic filing continues to be an important component of the IRS's efforts to improve service, enhance enforcement, and modernize technology and work processes.<sup>9</sup> In most cases, the method a taxpayer or preparer uses to file a document with the IRS is based on taxpayer preference. However, certain IRS forms, schedules, and other documents still require paper filing.<sup>10</sup> Figure 2.8.1 provides a partial list of commonly used forms that taxpayers and preparers can only file by paper.

**FIGURE 2.8.1, Filings of Forms Ineligible for E-Filing, Processing Years (PYs) 2019-2021 (Through September 29, 2021)<sup>11</sup>**

Forms That Taxpayers Can Only File by Paper	PY 2021	PY 2020	PY 2019
Form W-7, Application for IRS Individual Taxpayer Identification Number	1,301,750	1,119,836	1,526,880
Form 5472, Information Return of a 25 percent Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business (Currently e-filing is not available for Foreign-Owned U.S. Disregarded Entities)	264,396	275,676	286,100
Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund	217,235	173,232	219,745
Form 14039, Identity Theft Affidavit	181,578	161,753	59,250
Form 1065-X, Amended Return or Administrative Adjustment Request (AAR)	94,117	92,899	103,264
Form SS-4, Application for Employer Identification Number (for foreign companies)	55,907	46,260	53,950
Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons	47,494	24,274	55,891
Form 1139, Corporation Application for Tentative Refund	30,986	34,823	39,191
Form 4768, Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes	18,024	15,291	15,182
Form 8038-G, Information Return for Tax-Exempt Governmental Bonds	16,635	7,446	22,000
Form 1120-RIC, U.S. Income Tax Return for Regulated Investment Companies	16,634	2,551	18,331
Form 730, Monthly Tax Return for Wagers	15,080	14,158	23,889
Form 843, Claim for Refund and Request for Abatement	12,127	6,968	5,486
Form 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts	3,909	434	4,101
Form 8703, Annual Certification of a Residential Rental Project	2,412	3,555	6,226
Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues	1,438	1,209	2,695
Form 14039B, Business Identity Theft Affidavit	163	181	232
Form 8328, Carryforward Election of Unused Private Activity Bond Volume Cap	44	193	225

The IRS continues to make progress converting paper-only forms to e-file. During 2021, for example, the IRS enabled taxpayers and their authorized third parties to electronically submit Form 2848, Power of Attorney and Declaration of Representative, and Form 8821, Tax Information Authorization, by launching two different applications: (1) Tax Pro Account and (2) Submit Forms 2848 and 8821 Online.<sup>12</sup> The launch of these two applications were significant developments considering that about 1.5 million Forms 2848 and more than 760,000 Forms 8821 were filed in PY 2021 through September 29.<sup>13</sup>

In August 2020, the IRS enabled taxpayers and preparers to e-file Form 1040-X, Amended U.S. Individual Income Tax Return.<sup>14</sup> However, the IRS still manually processes e-filed Forms 1040-X, which eliminates some benefits of e-filing. The IRS has indicated that it is exploring the incorporation of automation into the processing of Forms 1040-X.<sup>15</sup> This would be an important development considering that the IRS received about 3.6 million Forms 1040-X in FY 2021 through September 29.<sup>16</sup>

In addition, the IRS has stated that it plans to expand e-file to enable taxpayers to electronically file all business returns. This will allow the IRS to better integrate the returns and the information reported with the IRS submission processing and compliance functions.<sup>17</sup>

Despite these measures, the number of forms on the list in Figure 2.8.1 that taxpayers had to file on paper during PY 2021 totaled over two million. Unless and until the IRS can make these forms eligible for e-filing, it will continue to receive a large volume of paper forms that it must transcribe and that are subject to the same delays and transcription errors described earlier, at greater expense to taxpayers.<sup>18</sup> Due to the sheer volume of Forms W-7 filed each year, we recommend that the IRS evaluate the Individual Tax Identification Number (ITIN) application process to determine the feasibility of digitizing the process in some manner, potentially by enabling certified acceptance agents to electronically submit the form and copies of any necessary documentation, to the extent possible. In addition, until the IRS enables taxpayers to e-file all IRS forms, it should explore the possibility of accepting such unsupported forms as attachments to e-filed tax returns.

### E-File Rejections Lead to Paper Filing

Some taxpayers and preparers who intend to e-file are unsuccessful when they attempt to transmit a return electronically. The IRS will reject an electronically submitted return if it breaks one or more of the IRS Modernized e-File (MeF) business rules. Figure 2.8.2 shows the top five business rules broken for tax year (TY) 2020 individual returns.

**FIGURE 2.8.2, Top Five Business Rules Broken in TY 2020 Individual Tax Returns Through September 29, 2021<sup>19</sup>**

Business Rule Rejection Code	Number of Times Rule Broken	Percentage of All Rejections	Description of Business Rule
IND-031-04	8,395,325	30%	Primary taxpayer's prior year personal identification number (PIN) or adjusted gross income (AGI) reported on the return did not match IRS records
IND-032-04	2,178,415	8%	Spouse's prior year PIN or AGI reported on return did not match IRS records
R0000-507-01	1,550,214	6%	A dependent's Social Security number (SSN) reported on the return was used in a previously filed return for the same tax year
R0000-504-02	1,440,462	5%	Each dependent's name and SSN entered on return did not match IRS records
R0000-194	1,301,731	5%	Submission is a duplicate of previously accepted submission

While the business rules that result in e-file rejections are meant to prevent more downstream compliance problems, the IRS should review the most frequently broken business rules to determine a way to minimize the rate of occurrence without increasing the risk of identity theft and the filing of potentially fraudulent returns. The IRS may be able to reduce certain rejections by educating taxpayers and continuing to work closely with the tax return preparation software industry to ensure taxpayers receive clear and timely warnings of potential issues and instructions on how to resolve any rejections that occur during the preparation and filing process.

For example, as shown in Figure 2.8.2, in TY 2020, the top two related business rules, which require the primary taxpayer and the taxpayer's spouse to accurately enter the AGI reported on the prior year return or a self-select PIN, were tripped over ten million times, impacting over five million taxpayers. If the taxpayer

used the same commercial software to prepare the prior year return, the software typically automatically provides the prior year AGI. Otherwise, taxpayers entered the information themselves. This issue received media attention in the 2021 filing season because of the large number of unprocessed TY 2019 returns.<sup>20</sup> If the IRS had not yet processed the taxpayer's TY 2019 return and the software or the taxpayer provided the AGI amount reported on the filed but unprocessed return, the IRS prevented the taxpayer from e-filing his or her TY 2020 return. To prevent confusion, the IRS provided guidance that taxpayers with unprocessed TY 2019 returns should enter "0" as their TY 2019 AGI.<sup>21</sup> Many preparers and taxpayers were unaware of the guidance, did not enter "0," were prevented from e-filing, and filed TY 2020 returns by paper.

When taxpayers and preparers attempt to e-file, but the return is rejected because it broke a business rule, it is important that they have the ability to conveniently access taxpayer transcripts, ideally through an online account application. In addition, the most effective way to communicate with taxpayers and preparers at the time of filing is through the tax return preparation software products. Partnership with the software industry is key to ensuring that taxpayers and preparers receive the most recent guidance on how to address an error that causes an e-file rejection.

Additionally, the IRS should evaluate the overall need to reject an e-filed "imperfect tax return." Ideally, the rejection of an e-filed tax return provides a taxpayer the opportunity to correct a clear error at the filing stage. However, if the rejection forces the taxpayer to paper file the return with the uncorrected error, the taxpayer and the IRS are in no better position. The taxpayer experiences all the delays associated with paper processing, and the transcription process can introduce even more errors, which will result in downstream enforcement action. The IRS should evaluate whether it is feasible to accept the imperfect tax return upon filing and direct the return to a treatment stream for further review. Even if this treatment requires some level of manual processing, at least the IRS has captured the return information electronically, which is an improvement over the paper filing of such imperfect tax return. The IRS can work closely with the tax return preparation software industry to ensure that the software provides the taxpayers and preparers the necessary upfront opportunity to correct any potential errors before transmitting the tax return.

### Inability to E-File Returns With Attachments

There are a variety of circumstances in which a taxpayer is required or encouraged to submit documentation in support of a return position (*e.g.*, statements, disclosures, explanations, appraisals). It is our understanding that individual taxpayers have been unable to e-file their tax return when it includes at least one attachment. The IRS has stated that its MeF system allows both individual and business taxpayers to e-file tax returns with attachments of most IRS forms and other documentation (*e.g.*, statements, appraisals) if the files are in the proper PDF/Binary format. The taxpayer also has the option to paper file certain supporting documents for an e-filed return by mailing the documents with IRS Form 8453, U.S. Individual Income Tax Transmittal for an IRS e-File Return. This mail-in option is limited to only those forms specifically designated on Form 8453.<sup>22</sup>

The IRS's Enterprise Digitalization Office has expressed the need for multiyear funding to enable the IRS to accept all attachments through e-file.<sup>23</sup> It is our understanding that some individual tax return preparation software companies may also place limits on the taxpayer's ability to attach a document to the return, even if it is in the proper PDF/Binary format. The software may not clearly state or locate the instructions on how to properly attach a document to the tax return. Moreover, some taxpayers may not have the necessary equipment to scan and upload documents in the proper format because many taxpayers have become accustomed to capturing images of documents using their cell phones. Because the inability to attach a document is preventing taxpayers from e-filing, we recommend that the IRS collaborate with the software industry to determine how to remove barriers to attaching documents to minimize the paper filing of these tax returns.<sup>24</sup>

### Inability to E-File Returns With Overrides of Prepopulated Fields

Most tax return preparation software products use a question-and-answer (Q&A) format and then populate IRS forms based on user responses. However, there are times when the Q&A format does not produce the correct result, and informed users have the option to override the entries populated onto IRS forms to produce a correct result. Some overrides come with a warning essentially stating that such override will prevent the user from e-filing. According to the IRS, some software products may prevent the user from changing certain prepopulated fields to prevent the IRS from rejecting the e-filed return due to an incorrect value.<sup>25</sup> For example, a software product may populate a field on the return based on prior year data, instructions on the forms, or calculations based on other entries. This makes sense when the user attempts to insert an incorrectly calculated number for prepopulated fields based on pure calculations. It does not make sense in other fields not based on pure calculations. In such a case, the software product should clearly warn the user of the risk that a questionable override could result in a potential rejection or subsequent compliance issue, and the user can make the decision whether to accept the risk based on his or her confidence level in the override. The IRS should continue to collaborate with the tax return preparation software industry to determine a workable solution to enable the e-filing of accurate and complete tax returns.

### Some Taxpayers Continue to Choose to Paper File

Some taxpayers who have the ability to e-file their return still choose to paper file. While we acknowledge the significant benefits of e-file and implore the IRS to remove barriers to e-file, we respect the preferences of taxpayers who make an informed decision to paper file their returns.

In 2010, the IRS commissioned MITRE to conduct the Phase 2 of the Advancing e-File Study, which included an evaluation of the reasons taxpayers and preparers paper file. The study produced the following reasons:<sup>26</sup>

- Concern over the security and privacy of internet and e-file;
- Confusion about how e-file works;
- Actual or perceived inability to e-file forms, schedules, and attachments;
- No need for quick refund (or owes taxes);
- Lack of technology necessary to e-file;
- Cost to e-file;
- Recordkeeping concerns (storing electronic copies);
- Unaware e-file is more accurate; and
- Fear of greater risk of audit.

Surveys conducted in 2015 and 2020 by the IRS's Small Business/Self-Employed (SB/SE) Division found similar reasons.<sup>27</sup>

To reduce these concerns and encourage taxpayers to make informed decisions to e-file, the IRS frequently conducts outreach and education, including annual pre-filing season outreach campaigns, to alert taxpayers to the benefits of e-file.<sup>28</sup> The IRS should conduct comprehensive research of individual and business taxpayers as well as their preparers, broken down by demographics, to determine the reasons they continue to paper file and whether they would convert to e-file if they were more informed about the benefits of e-file. The IRS can use the findings of this research to conduct a data-driven outreach campaign to address taxpayers' concerns.

### The IRS Does Not Publicize an Updated Long-Term E-File Goal

Section 2001(a) of the IRS Restructuring and Reform Act of 1998 (RRA 98) directed the IRS to set a goal of achieving an 80 percent e-file rate by 2007.<sup>29</sup> Since that time, the IRS has not publicized an updated long-term e-file rate goal.<sup>30</sup> The IRS previously included e-file rate targets in its budget reporting but discontinued this practice in FY 2019 for the individual e-file rate and in FY 2021 for the business e-file rate.<sup>31</sup> Two of the



three main goals of the IRS Digitalization Strategy are to (1) reduce paper volume and (2) increase access to data, but the strategy does not include a specific e-file rate goal.<sup>32</sup>

The IRS achieved an overall e-file rate of 81.3 percent in FY 2020.<sup>33</sup> In its 2021 annual report, the Electronic Tax Administration Advisory Committee (ETAAC) recommended that the IRS increase its electronic filing goal now that it surpassed an 80 percent e-file rate for major returns in 2017.<sup>34</sup> ETAAC did not provide a specific number but recommended that the IRS reset its goal to better match progress since 1998. ETAAC suggested the IRS either raise the 80 percent goal or expand the types of forms included in the 80 percent goal. We support ETAAC's recommendation and encourage the IRS to work with ETAAC to set a new long-term e-file rate goal.<sup>35</sup> The IRS should factor into any new e-file goals its planned implementation of e-file mandates included in the Taxpayer First Act.<sup>36</sup> Such mandates will increase the overall rate of e-file. However, we recommend that the IRS couples any implementation of e-file mandates with a fair hardship waiver process for taxpayers and preparers who cannot reasonably comply with such mandates.<sup>37</sup>

### **Scanning Technology Is Necessary to Efficiently and Accurately Process Electronically Prepared and Paper-Filed Returns<sup>38</sup>**

During the 2021 filing season (through August 26), about six million paper-filed individual tax returns were electronically prepared using commercial tax return preparation software.<sup>39</sup> Ideally, the IRS will succeed in its efforts to convert many of these taxpayers to e-file; however, achieving a 100 percent e-file rate is not realistic in the foreseeable future, and we are not suggesting it should be, as the IRS will continue to receive some of these returns on paper.

Both taxpayers and the IRS would benefit by improving the efficiency and accuracy of paper return processing, particularly since transcription errors occur in connection with nearly one quarter of individual paper tax returns.<sup>40</sup> Technology is available that would allow the IRS to scan paper returns prepared with software to capture the data more accurately and efficiently than manual transcription. To enable the IRS to utilize one form of scanning technology, known as 2-D barcoding, tax return preparation software would generate and imprint a horizontal or vertical barcode containing all return information on the return. The IRS, upon receiving the paper return, would scan the barcode, capture the data, decode it, and process the return as if it had been transmitted electronically. Many states have used 2-D barcoding for paper-based income tax returns for more than a decade.<sup>41</sup> The IRS itself has partnered with the software industry to enable taxpayers to file Schedules K-1 with a 2-D bar code.<sup>42</sup>

The IRS has adopted another type of scanning technology known as OCR to process certain forms filed on paper. With this technology, the IRS scans the paper-filed return (without a barcode), captures the data, stores the tax form images and data in an electronic format, and processes the return as if it had been e-filed.<sup>43</sup> A major advantage of OCR technology is that it is not limited to digitizing returns prepared with software and prevents the need for manual data entry. OCR is, admittedly, less accurate at capturing data from handwritten returns, but it is our understanding that such accuracy will increase with the integration of artificial intelligence technology.<sup>44</sup>

While scanning technology is not considered e-filing and still involves the submission of a paper return, it produces many of the benefits of e-filing for the taxpayer and the IRS, including: (i) faster tax return processing and delivery of refunds, (ii) more accurate recording of tax return information, and (iii) return processing cost savings. Despite these benefits, the IRS does not have updated scanning technology (*e.g.*, 2-D barcoding, OCR, or similar data extraction technology) for many paper-filed returns, including individual income tax returns. In addition, adoption of these (or similar) technologies will require the IRS to: (1) update the applicable forms (*e.g.*, to add a 2-D barcode and provide the requisite spacing for OCR) and (2) closely coordinate with the tax return preparation and filing software companies.

The IRS has indicated an interest in adding 2-D barcodes on all IRS forms and outgoing correspondence, due to the industry-proven efficiencies associated with extracting machine-readable data from paper returns and correspondence. It has worked on this issue with the software industry as part of the Technology Verticals of its Pilot IRS program.<sup>45</sup> Because the IRS has indicated a low adoption rate of 2-D barcode technology to Schedules K-1 by software companies, it should meet with industry representatives to determine how to minimize any barriers to further expansion of such technology, while at the same time obtaining statutory authority requiring the adoption of 2-D barcodes (or similar technologies). The IRS is also considering new OCR technology through its Pilot IRS program. However, widescale expansion of both 2-D barcode and OCR technologies will require additional multiyear funding.<sup>46</sup>

**To further increase e-file, the IRS must evaluate and address the barriers taxpayers face to facilitate e-filing for taxpayers.**

## CONCLUSION AND RECOMMENDATIONS

The IRS still receives a significant number of paper-filed returns from individual and business taxpayers. To achieve the significant benefits of e-file, the IRS must evaluate the current obstacles taxpayers and the agency face to increase the e-file rate. It must focus on and prioritize expanding e-file to commonly used forms that taxpayers and preparers can only paper file. To further increase e-file, it must evaluate and address the barriers taxpayers face to facilitate e-filing for taxpayers. Such efforts include evaluating e-file rejections to determine how the IRS can partner with the tax return preparation software industry to minimize errors causing such rejections and whether rejections are necessary at all. In addition, it must partner with the industry to determine how to reduce the e-file obstacles for returns with attachments and overrides. Because it has surpassed the 80 percent e-file goal set by RRA 98, the IRS should reset its goal, especially as it plans to implement e-file mandates in the Taxpayer First Act. Finally, the IRS must conduct research to determine why some taxpayers continue to paper file their returns. For those taxpayers and preparers who continue to paper file, the IRS should strive to improve the accuracy and efficiency of processing paper returns.

### Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Evaluate the overall need to reject an e-filed “imperfect tax return” and determine the feasibility of accepting the imperfect tax return upon filing and directing it to a treatment stream for further review.
2. Work closely with the tax return preparation software industry to ensure that the software provides the taxpayers and preparers the necessary upfront opportunity to correct any potential errors before e-filing that would currently result in an e-file rejection.
3. Meet with tax return preparation software industry representatives to determine how to minimize the paper filing of software-prepared tax returns that include attachments. The goal of such discussions should be to devise a workable solution that permits taxpayers to e-file returns.
4. Meet with tax return preparation software industry representatives to determine how to minimize the paper filing of software-prepared returns with overrides of some prepopulated fields. The goal of such discussions should be to devise a workable solution that permits the e-filing of these returns.
5. Conduct comprehensive research to determine the reasons individual and business taxpayers and their preparers, broken down by demographics, continue to paper file and whether they would convert to e-file if they are more informed about the benefits of e-file. The IRS can use the findings of this research to conduct a data-driven outreach campaign to address taxpayers’ concerns.

6. Meet with tax return preparation software industry representatives to determine how to minimize any barriers to incorporating 2-D barcode technology into electronically prepared returns that are printed and filed on paper.
7. Utilize 2-D barcoding and optical character recognition (or similar) technology to improve the accuracy and efficiency of processing of paper tax returns.
8. Collaborate with ETAAC to set a new long-term electronic filing rate goal. Any implementation of e-file mandates to achieve these goals must be coupled with a fair hardship waiver process to accommodate taxpayers and preparers who cannot comply.

### Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide multiyear funding for the IRS to expand the use of 2-D barcoding and optical character recognition technology to improve the accuracy and efficiency of paper return and correspondence processing.<sup>47</sup>

### RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division

Darren Guillot, Commissioner, Collection and Operations Support, Small Business/Self-Employed Division

De Lon Harris, Commissioner, Examination and Operations Support, Small Business/Self-Employed Division

Nikole Flax, Commissioner, Large Business and International Division

Harrison Smith, Co-Director, Digitalization, Enterprise Digitalization and Case Management Office

Justin Abold-LaBreche, Co-Director, Enterprise Case Management, Enterprise Digitalization and Case Management Office

### IRS COMMENTS

Through October 23, 2021, the IRS processed 151.6 million individual electronically filed (e-file) returns, which was 91.2 percent of all individual returns processed. As of November 29, 2021, the IRS also processed 41.2 million e-filed business returns. The IRS continues to see increases in e-filed tax returns, and we continue to expand the scope of service by adding more forms available for e-file, building on paperless processing capabilities, and leveraging Free File services to promote e-file.

In 2021, the IRS added five new forms to the modernized e-file platform including Form 990-T, Exempt Organization Business Income Tax Return and Schedule LEP (Form 1040), Request for Alternative Language Products by Taxpayers With Limited English Proficiency. We also redesigned Form 1040-NR, U.S. Nonresident Alien Income Tax Return, to reflect updates made to the Form 1040 due to legislative changes. For 2022, the IRS is developing 14 additional e-fileable forms, including Schedules K-2 and K-3 for Form 1065, 8865, and 1120-S returns, and Form 9000, Alternative Media Preference, which provides taxpayers options for future communications with the IRS including Braille and audio formats. These efforts not only increase e-file capabilities, but provide assistance to those with specific needs.

Pending funding approval, during Fiscal Year (FY) 2022 the IRS will expand e-file capabilities for Form 1040-X, Amended U.S. Individual Income Tax Return, by allowing e-filing of amendments for non-electronic original returns and offer e-filing of Form 1040-X for all 1040-family returns.

Additional funding for FY 2023 will precipitate discussions on automating backend processing for Form 1040-X adjustments. These changes are another step to improve the taxpayer experience, although the required funding must compete with numerous legislative needs and other IT service demands.

We actively encourage taxpayers to use IRS Free File services to file electronically. To expand awareness, we mailed 2.5 million postcards to taxpayers who previously filed on paper. Free File continues to trend upwards with a 12.9 percent increase in processing year 2021, and a 59.6 percent increase in use of Free File Fillable Forms. Free File companies also offered the ability for taxpayers to e-file amended individual tax returns in 2021. We also developed a successful strategy to assist taxpayers by delivering free tax preparation services through our Volunteer Income Tax Assistance (VITA)/Tax Counseling for the Elderly (TCE) partners using multifaceted approaches, including virtual services.

The IRS is assessing additional ways to reduce paper processing and provide more efficient service for our customers. One option being considered is optical character recognition (OCR). An OCR pilot found returns successfully scanned and processed electronically, thus reducing processing times, errors, and labor-intensive tasks.

Removing electronic barriers and expanding technology to improve the taxpayer experience is a collaborative and complex effort. The IRS evaluates and prioritizes forms for e-file capability, while simultaneously balancing new legislatively required programming, IT priorities, and limited resources. The IRS continues to work with the Taxpayer Advocate Service to review and implement recommendations related to Free File and e-file to continually improve the customer experience.

## TAXPAYER ADVOCATE SERVICE COMMENTS

In recent years, the IRS needed to prioritize e-file initiatives given limited resources and increasing legislatively mandated information technology programming requirements. Additional funding would enable the IRS to further evaluate and address the current obstacles preventing taxpayers from e-filing.

Collaboration with the tax return preparation software industry is also necessary to increase e-filing. The IRS can partner with the industry to evaluate e-file rejections and devise a plan to reduce their occurrence. Such discussions with the industry should also address how to enable taxpayers to e-file returns with attachments and/or overrides of prepopulated fields.

Despite the IRS's efforts to increase the e-file rate, it will continue to receive millions of paper returns for the foreseeable future. Additional funding would enable the IRS to utilize 2-D barcode and optical character recognition technology to effectively process those paper returns. While such technology does not convert paper filers to e-file, it improves the taxpayer experience by providing more efficient and accurate processing of paper returns.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that IRS:

1. Evaluate the overall need to reject an e-filed “imperfect tax return” and determine the feasibility of accepting the imperfect tax return upon filing and directing it to a treatment stream for further review.
2. Work closely with the tax return preparation software industry to ensure that the software provides the taxpayers and preparers the necessary upfront opportunity to correct any potential errors before e-filing that would currently result in an e-file rejection.
3. Meet with tax return preparation software industry representatives to determine how to minimize the paper filing of software-prepared tax returns that include attachments. The goal of such discussions should be to devise a workable solution that permits taxpayers to e-file returns.
4. Meet with tax return preparation software industry representatives to determine how to minimize the paper filing of software-prepared returns with overrides of some prepopulated fields. The goal of such discussions should be to devise a workable solution that permits the e-filing of these returns.
5. Conduct comprehensive research to determine the reasons individual and business taxpayers and their preparers, broken down by demographics, continue to paper file and whether they would convert to e-file if they are more informed about the benefits of e-file. The IRS can use the findings of this research to conduct a data-driven outreach campaign to address taxpayers’ concerns.
6. Meet with tax return preparation software industry representatives to determine how to minimize any barriers to incorporating 2-D barcode technology into electronically prepared returns that are printed and filed on paper.
7. Utilize 2-D barcoding and optical character recognition (or similar) technology to improve the accuracy and efficiency of processing of paper tax returns.
8. Collaborate with ETAAC to set a new long-term electronic filing rate goal. Any implementation of e-file mandates to achieve these goals must be coupled with a fair hardship waiver process to accommodate taxpayers and preparers who cannot comply.

### Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide multiyear funding for the IRS to expand the use of 2-D barcoding and optical character recognition technology to improve the accuracy and efficiency of paper return and correspondence processing.

## Endnotes

- 1 See National Taxpayer Advocate Fiscal Year 2022 Objectives Report to Congress 1-23 (*Review of the 2021 Filing Season*); National Taxpayer Advocate 2020 Annual Report to Congress 2-8 (Most Serious Problem: *Introduction: The Most Serious Problems Encountered by Taxpayers*).
- 2 IRS, Filing Season Statistics Report for Week Ending October 22, 2021, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-october-22-2021>.
- 3 *Id.*
- 4 *Id.*
- 5 *Id.*
- 6 The Taxpayer First Act provides for e-file mandates applicable to partnerships, corporations, exempt organizations, and information returns. Taxpayer First Act, Pub. L. No. 116-25, §§ 2301, 3101, 133 Stat. 981, 1012-013, 1015-016 (2019). Implementation of these provisions will certainly increase the e-file rate for business returns.
- 7 IRS response to TAS information request (Sept. 16, 2021).
- 8 IRS, Document 6746, Cost Estimate Reference FY 2020, Exhibit 40 (June 2021). The cost to process a paper Form 1040 in FY 2020 was significantly higher than the cost in FY 2019 (\$5.49) due to the pandemic. IRS, Document 6746, Cost Estimate Reference FY 2019, Exhibit 40 (June 2020).
- 9 IRS response to TAS information request (Sept. 16, 2021).
- 10 See IRS, Pub. 5316, Internal Revenue Service Advisory Council Public Report 32-36 (Nov. 2020) (IRSAC recommends paper-only forms the IRS should prioritize).
- 11 IRS, Compliance Data Warehouse (CDW) (Sept. 29, 2021). Data compiled from the IRS CDW Individual Returns Transaction File, Business Returns Transaction File, Individual Master File (IMF), Business Master File, Modernized Tax Return Data Base, Electronic Tax Administration Research and Analysis System (ETARAS), Entity Application Programs, and Centralized Authorization File (CAF) databases. The count for the PY 2021 Form W-7 is IRS, 2021 Individual Taxpayer Identification Number (ITIN) Comparative Report (Week ending 10/23/21 v. 10/24/20). Some forms listed in Figure 2.8.1 are submitted multiple times for the same purpose before the IRS processes them properly. E-filing would cut down on repeated submissions and the overall volume of mail and follow-up calls. There are other forms that must be filed on paper but which are not transcribed (or for which complete data is not readily available) including Form 211, Application for Award for Original Information; Form 1045, Application for Tentative Refund; Form 1310, Statement of Person Claiming Refund Due a Deceased Taxpayer (when Part 1 Boxes A and B are present); Form 4466, Corporation Application for Quick Refund of Overpayment of Estimated Tax; Form 4506, Request for Copy of Tax Return; Form 5074, Allocation of Individual Income Tax to Guam or the Commonwealth of the Northern Mariana Islands (CNMI); Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests; Form 8802, Application for United States Residency Certification; Form 8809-I, Application for Extension of Time to File FATCA Form 8966; Form 8822, Change of Address; Form 8898, Statement for Individuals Who Begin or End *Bona Fide* Residence in a U.S. Possession; Form 8918, Material Advisor Disclosure Statement; Form 56, Notice Concerning Fiduciary Relationship; and Form 12153, Request for a Collection Due Process or Equivalent Hearing.
- 12 See IRS, IR-2021-20, New IRS "Submit Forms 2848 and 8821 Online" Offers Contact-Free Signature Options for Tax Pros and Clients Sending Authorization Forms (Jan. 25, 2021); IRS, IR-2021-154, IRS Improves Services to Taxpayers with Digital Authorizations and Launch of New Tax Pro Account (July 19, 2021).
- 13 IRS, CDW, CAF, CAF Source Table (Sept. 29, 2021).
- 14 IRS, IR-2020-182, Major IRS Milestone Helps Taxpayers Correct Tax Returns With Fewer Errors, Speeds Processing (Aug. 17, 2020).
- 15 IRS response to TAS information request (Sept. 16, 2021).
- 16 IRS, CDW, IMF Transaction History Table (Sept. 29, 2021).
- 17 IRS response to TAS information request (Sept. 22, 2021).
- 18 See also IRS, Pub. 5316, Internal Revenue Service Advisory Council Public Report 137-144 (Nov. 2021).
- 19 IRS, CDW, ETARAS MEF 1544 Table (Sept. 29, 2021).
- 20 See, e.g., Howard Gleckman, *Are IRS Security Tools Blocking Millions of People From Filing Electronically?*, FORBES (Apr. 26, 2021), <https://www.forbes.com/sites/howardgleckman/2021/04/26/are-irs-security-tools-blocking-millions-of-people-from-filing-electronically/>.
- 21 IRS, Validating Your Electronically Filed Tax Return, <https://www.irs.gov/individuals/electronic-filing-pin-request> (last visited Sept. 12, 2021).
- 22 IRS response to TAS information request (Sept. 16, 2021). The Form 8453 instructions say, "Don't attach any form or document that isn't shown on Form 8453 next to the checkboxes. If you are required to mail in any documentation not listed on Form 8453, you can't file the tax return electronically." IRS Form 8453, U.S. Individual Income Tax Transmittal for an IRS e-file Return, General Instructions 2 (2020). Form 8453 is limited to the following designated forms: Form 1098-C, Contributions of Motor Vehicles, Boats, and Airplanes; Form 2848, Power of Attorney and Declaration of Representative; Form 3115, Application for Change in Accounting Method; Form 3468, Investment Credit; Form 4136, Credit for Federal Tax Paid on Fuels; Form 5713, International Boycott Report; Form 8283, Noncash Charitable Contributions; Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent; Form 8858, Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs); Form 8864, Biodiesel and Renewable Diesel Fuels Credit; Form 8885, Health Coverage Tax Credit; and Form 8949, Sales and Other Dispositions of Capital.
- 23 IRS response to TAS information request (Sept. 22, 2021).
- 24 IRS response to TAS information request (Sept. 16, 2021).
- 25 *Id.*
- 26 MITRE Corporation, Document No. 0221.A2b, *Internal Revenue Service: Advancing e-File Study Phase 2 Report: An Examination of Options to Increase Electronic Filing of Individual Returns* 24-25, 34-35 (Dec. 15, 2010).
- 27 IRS response to TAS information request (Sept. 17, 2021) (SB/SE response details the FY 2020 SB/SE Customer Experiences, Expectations, and Needs Survey and the Employment Tax e-File Survey for Tax Practitioners, November 2015).
- 28 See, e.g., IRS, IR-2021-35, Avoid Pandemic Paper Delays: Use e-File With Direct Deposit for Faster Refunds as IRS Prepares to Open 2020 Filing Season (Feb. 11, 2021); IRS, IR-2020-02, IRS Opens 2020 Filing Season for Individual Filers on Jan. 27 (Jan. 6, 2020).
- 29 RRA 98, Pub. L. No. 105-206, § 2001, 112 Stat. 685, 723 (1998).
- 30 IRS response to TAS information request (Sept. 16, 2021).



## Most Serious Problem #8: E-Filing Barriers

- 31 IRS response to TAS information request (Sept. 16, 2021).
- 32 IRS response to TAS information request (Sept. 22, 2021); IRS, Enhancing Systems and Processes to Better Serve Taxpayers (July 22, 2021), <https://www.irs.gov/about-irs/enhancing-systems-and-processes-to-better-serve-taxpayers>.
- 33 IRS, Pub. 55-B, Internal Revenue Service 2020 Databook 2 (June 2021).
- 34 IRS, Pub. 3415, Electronic Tax Administration Advisory Committee Annual Report to Congress 36 (June 2021).
- 35 See also IRS, Pub. 5316, Internal Revenue Service Advisory Council Public Report 141 (Nov. 2021).
- 36 The Taxpayer First Act provides for e-file mandates applicable to partnerships, corporations, exempt organizations, and information returns. Taxpayer First Act, Pub. L. No. 116-25, §§ 2301, 3101, 133 Stat. 981, 1012-013, 1015-016 (2019). Implementation of these provisions will certainly increase the e-file rate for business returns.
- 37 For an example of e-file mandate administrative exemptions and waiver processes, see IRS Notice 2011-26, 2011-17 I.R.B. 720 and Rev. Proc. 2011-25, 2011-17 I.R.B. 725, respectively.
- 38 See National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 12 (Require the IRS to Work With Tax Software Companies to Incorporate Scanning Technology for Individual Income Tax Returns Filed on Paper).
- 39 IRS, CDW (Jan. 1, 2021 through Aug. 26, 2021).
- 40 IRS response to TAS information request (Sept. 16, 2021).
- 41 Federation of Tax Administrators, 2-D Barcode Frequently Asked Questions (June 19, 2007).
- 42 IRS, 2-D Bar Coding for Schedules K-1 is the Preferred Method, <https://www.irs.gov/e-file-providers/two-dimensional-bar-coding-for-schedules-k-1-is-the-preferred-method> (last visited Sept. 16, 2021).
- 43 See Internal Revenue Manual (IRM) 3.41.274, General Instructions for Processing via SCRIPS (Nov. 5, 2019); IRM 3.41.275.1, Program Scope and Objectives (Nov. 14, 2017).
- 44 Meeting Between the Council for Electronic Revenue Communication Advancement and TAS on the topic of e-File Barriers (Nov. 10, 2021); Meeting Between the Pennsylvania Department of Revenue and TAS on the topic of e-File Barriers (Nov. 10, 2021).
- 45 IRS response to TAS information request (Sept. 22, 2021); Department of Treasury, Pilot IRS Informational Posting (Apr. 2, 2021), <https://sam.gov/opp/5eb4fcfbdf342bd94c0af400dbcca38/view?index=opp&naics=541&page=9>.
- 46 See IRS response to TAS information request (Sept. 22, 2021); Department of Treasury, Pilot IRS: Enterprise Digitization and Case Management Office (EDCMO) Digitalization Technology Pilot OCR Awards (July 26, 2021), <https://sam.gov/opp/3d9a450e51df4bc9b3f75ddc12b9a578/view>.
- 47 National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 12 (Require the IRS to Work With Tax Software Companies to Incorporate Scanning Technology for Individual Income Tax Returns Filed on Paper).

## **CORRESPONDENCE AUDITS: Low-Income Taxpayers Encounter Communication Barriers That Hinder Audit Resolution, Leading to Increased Burdens and Downstream Consequences for Taxpayers, the IRS, TAS, and the Tax Court**

### **WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS**

Many taxpayers experience difficulties with correspondence audits. Once a return is selected for examination, the IRS notifies the taxpayer by letter. Correspondence audit letters fail to provide a point of contact – the taxpayer is not given a direct phone number or the name of an IRS employee to contact. If no response to the initial contact letter is received, the IRS generally makes no effort to contact the taxpayer before making an adjustment, issuing a notice of deficiency, and closing the case.<sup>1</sup> Taxpayers wishing to speak with someone regarding an audit are limited to calling a representative on a toll-free line. This process creates significant challenges for taxpayers and practitioners who need to reach the IRS to discuss their cases. Getting through on the IRS's toll-free lines is difficult and time-consuming. If the IRS initiates a call to the taxpayer or practitioner in response to correspondence, the taxpayer or practitioner is often unavailable. Getting back in touch with the IRS can be nearly impossible due to the IRS's inability to leave detailed phone messages.

In fiscal year (FY) 2019, more than half of the taxpayers subject to correspondence audits had total positive incomes (TPIs) below \$50,000, and most of these low-income taxpayers claimed the Earned Income Tax Credit (EITC).<sup>2</sup> These taxpayers often face particular challenges navigating the correspondence audit process. The IRS correspondence audit process is structured to expend the least amount of resources to conduct the largest number of examinations – resulting in the lowest level of customer service to taxpayers having the greatest need for assistance. Correspondence audits produce the lowest agreement rate, the highest no-response rate, and the highest volume of cases assessed by default.<sup>3</sup> The resulting high volume of unagreed cases leads to use of downstream resources for resolution activities that include audit reconsideration, appeals, litigation, and involvement of other IRS functions such as TAS and Collection. By devoting additional resources at the beginning of the correspondence audit process, the IRS could provide an appropriate level of customer service during the audit, avoiding unnecessary downstream costs and reducing the burden on our nation's least affluent and most vulnerable taxpayers. More importantly, by providing sufficient service to the population having the greatest need of assistance, the IRS could resolve these low-income audits earlier, preventing future compliance issues.

### **EXPLANATION OF THE PROBLEM**

In response to taxpayer complaints about the inability to contact IRS staff directly, section 3705(a) of the IRS Restructuring and Reform Act of 1998 (RRA 98) required that IRS correspondence “include in a prominent manner the name, telephone number, and unique identifying number of an Internal Revenue Service employee.” However, more than 20 years later, the IRS still has not meaningfully implemented this provision regarding its correspondence audit programs. This makes it difficult and frustrating for taxpayers or their representatives to reach a single point of contact at the IRS who is accountable and knowledgeable when seeking answers to questions about their audit or the information they submitted. The IRS correspondence audit program, as designed, leaves taxpayers solely dependent on toll-free phone services that operate with limited availability or paper correspondence with uncertain timeframes.<sup>4</sup> The inability to reach a single point

of contact diminishes the customer experience, creates IRS inefficiency, hinders opportunities to engage and educate our nation's taxpayers, and decreases potential for developing and building trust with the IRS.

The correspondence audit process works single-year, single-issue cases that the IRS believes it can easily resolve via mail, using an automated process to achieve efficiencies. The current process enables the IRS to complete a high volume of correspondence audits with a limited number of examiners, while providing limited (and often insufficient) levels of customer service.<sup>5</sup> Limited taxpayer interaction hinders low-income taxpayer audit participation and is a barrier toward achieving mutual audit resolution. In FY 2019, the IRS conducted the highest volume of individual audits on low-income taxpayers via correspondence.<sup>6</sup>

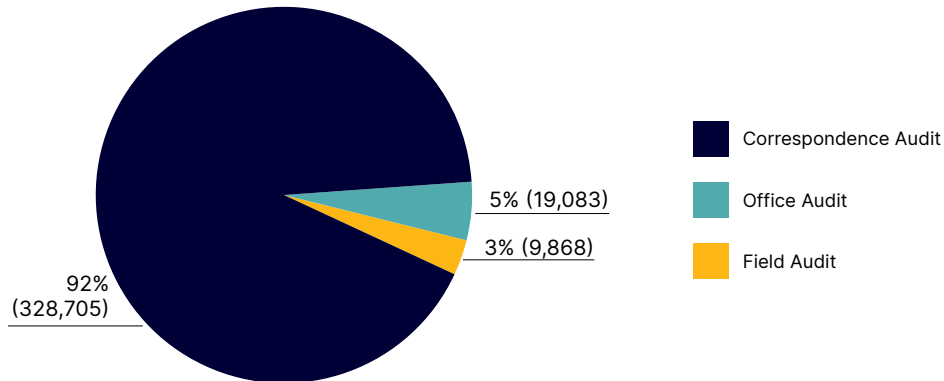
IRS compliance data reveals that 53 percent of the individual audits conducted by the IRS in FY 2019 were completed on taxpayers with TPIs below \$50,000, with 82 percent of these taxpayers filing returns that claimed the anti-poverty EITC.<sup>7</sup> Taxpayers in this income range are less likely to be represented by tax professionals and are more likely to have difficulty reaching the IRS for assistance.<sup>8</sup> The IRS makes little effort to reach these taxpayers if they are unresponsive or if their IRS correspondence is returned as undeliverable, and these taxpayers experience little or no personal interaction throughout the audit process.<sup>9</sup>

The IRS must improve the correspondence audit process to increase taxpayer engagement at this income level, to resolve audit issues, and to eliminate downstream consequences for the taxpayer and the IRS. By increasing access to assistance and personal interaction during the audit process, the IRS can increase low-income taxpayer audit participation, educate taxpayers for increased compliance, and reduce the use of IRS resources unnecessarily expended to resolve disputed examination determinations. Improved communication during the audit process is needed to reduce barriers that hinder low-income taxpayers, eliminate the unnecessary use of IRS resources, and ensure the protection of taxpayer rights, specifically the *right to a fair and just tax system*.<sup>10</sup>

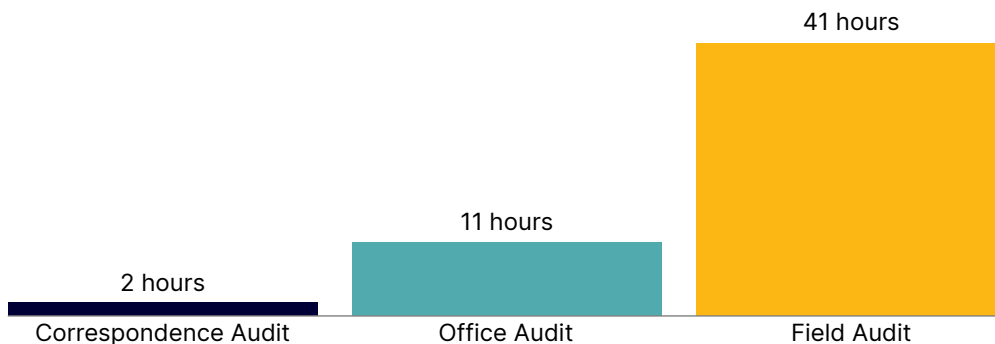
## ANALYSIS

The IRS typically conducts audits on low-income taxpayers via correspondence. As shown in Figure 2.9.1, the IRS conducted 92 percent of the FY 2019 audits on low-income taxpayers through correspondence, while only eight percent of these audits were assigned to field offices where examiners conduct audits in person.<sup>11</sup> Low-income taxpayer correspondence audits most frequently involved EITC and other refundable credits that require consideration of complex factors including a taxpayer's income, marital status, and relationship to dependents or children claimed.<sup>12</sup> Navigating these audits can be complex for low-income taxpayers, who are more likely to experience lower literacy rates and often possess limited English proficiency.<sup>13</sup> Low-income households are more likely to be unbanked, which can impact a taxpayer's ability to substantiate income and expenses, and tend to be more transitory, a factor that negatively affects a taxpayer's ability to receive and respond to IRS correspondence in a timely manner.<sup>14</sup> Though the IRS views correspondence audit issues as "non-complex," this is an inaccurate description of the complexity of the issues that taxpayers must navigate when reconciling the various filing status and refundable credit implications in the IRC. For example, low-income taxpayers are less likely to have "traditional family" households. Low-income children are more likely to live with either a single parent, in a multigenerational household, in a cohabiting household, or in a family with at least one non-biological child – rendering the application of the "qualifying child" rules much more complicated for low-income taxpayers.<sup>15</sup> Seemingly, the IRS's expectation is that low-income taxpayers can navigate the IRS's automated correspondence audit process unaided or with limited personal interaction. Audit results do not support this expectation.

Most low-income correspondence audits (82 percent) typically involve refundable credits and are conducted by the IRS's Wage and Investment (W&I) Division.<sup>16</sup> The remaining low-income correspondence audits (ten percent) are conducted by the IRS's Small Business/Self-Employed (SB/SE) Division.<sup>17</sup>

**FIGURE 2.9.1<sup>18</sup>****FY 2019 Individual Taxpayer Closed Audits – TPI Less Than \$50,000**

The IRS conducts its correspondence audits with limited or no taxpayer interaction. The average direct time an IRS employee charged to low-income taxpayer correspondence audits in FY 2019 was about two hours, while office and field examiners spent an average of 11 and 41 hours on their exams, respectively, as shown in Figure 2.9.2.<sup>19</sup> With its Automated Correspondence Examination system, the IRS automatically processes correspondence audit cases from creation to statutory notice to closing without any tax examiner involvement when a taxpayer does not send a written reply to IRS correspondence.<sup>20</sup>

**FIGURE 2.9.2<sup>21</sup>****FY 2019 Individual Taxpayer Closed Audits – Average Hours Spent to Audit Returns With TPI Less Than \$50,000**

The automated nature of IRS correspondence audits highlights the importance of comprehensible IRS correspondence reaching these taxpayers. More significantly, it highlights the importance of taxpayers reaching the IRS to seek clarification of the notice or audit process. Since low-income taxpayer audits most often involve issues related to taxpayer claims for EITC and other refundable credits, the IRS should provide low-income taxpayers more direct access to personalized IRS service throughout the audit process.

IRS correspondence audit notices direct taxpayers to call correspondence audit toll-free telephone numbers that have historically provided insufficient Levels of Service.<sup>22</sup> The IRS does not assign low-income taxpayers' audits to singular examiners who will work the case and serve as the taxpayer's point of contact. As shown

in Figures 2.9.3 and 2.9.4, only a portion of the calls made to the correspondence audit toll-free phone lines reached an examiner. This is primarily because IRS correspondence audit resources cannot service the inquiries generated from the volume of audits conducted. Frustrated taxpayers may abandon their refundable credit claims when they cannot receive timely or useful assistance from the IRS.

**FIGURE 2.9.3, W&I Correspondence Audits Opened Compared With W&I Correspondence Audit Toll-Free Telephone Service Provided<sup>23</sup>**

Fiscal Year	Audits Opened	Calls Received	Calls Answered	Level of Service
2016	462,654	1,351,822	489,295	40.2%
2017	481,664	1,484,849	541,043	40.2%
2018	447,566	1,440,366	517,395	40.2%
2019	319,558	1,098,142	392,227	40.7%

**FIGURE 2.9.4, SB/SE Correspondence Audits Opened Compared With SB/SE Correspondence Audit Toll-Free Telephone Service Provided<sup>24</sup>**

Fiscal Year	Audits Opened	Calls Received	Calls Answered	Level of Service
2016	301,567	412,853	241,225	65.8%
2017	348,985	435,512	236,213	60.8%
2018	298,466	468,569	245,140	60.8%
2019	289,334	317,737	162,730	59.9%

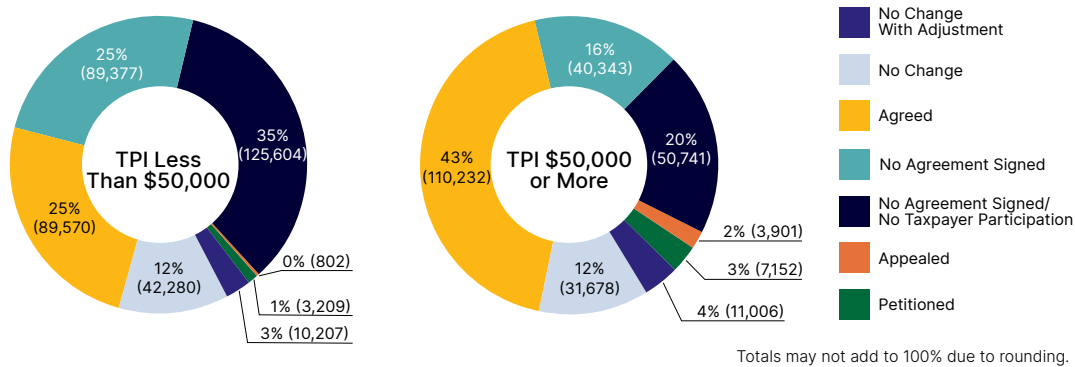
The IRS uses its Enterprise Planning Scenario Tool (EPST) to determine the number of audits it will conduct.<sup>25</sup> This tool determines the number of planned audits based on the number of full-time equivalent (FTE) employees assigned to the IRS's correspondence audit programs without regard to the volume of calls these audits will generate.<sup>26</sup> The staff conducting these audits must also staff the correspondence audit toll-free telephones. The IRS then determines the level of toll-free telephone service this staff can deliver.<sup>27</sup> Thus, the IRS formulates the telephone Level of Service apart from determining the number of audits it intends to conduct rather than using the past years' telephone inquiry volumes and service levels achieved.<sup>28</sup>

In FY 2019, W&I devoted 96 percent of its correspondence audit resources to completing correspondence audits *but devoted only four percent of its resources to responding to the telephone inquiries these audits generated.*<sup>29</sup> Similarly, SB/SE applied 95 percent of its resources toward audit completion *and five percent to responding to caller inquiries.*<sup>30</sup> Given that the W&I and SB/SE resources applied toward fielding FY 2019 correspondence audit toll-free phone inquiries produced about 40 and 60 percent Levels of Service, respectively, a minimum increase of six percent and three percent full-time employees would achieve a more appropriate level of telephone service for correspondence audit toll-free phone lines.<sup>31</sup> Absent the allocation of additional phone resources, corresponding reductions in correspondence audits would be necessary to achieve Levels of Service that would more realistically meet taxpayer needs and protect their *right to be informed.*

Taxpayers call the IRS to learn more about their audits, yet they cannot get that information easily. Low-income taxpayer audits reflect the lowest audit agreement rate, the highest no-response rate, and the highest volume of tax assessments made by default, as shown in Figure 2.9.5. Only 25 percent of low-income individual taxpayers agreed with their audit findings, while 60 percent of these taxpayers did not sign an agreement at the conclusion of the examination.<sup>32</sup>

FIGURE 2.9.5<sup>33</sup>

## FY 2019 Individual Taxpayer Closed Audits – Disposition by Income Level

**The IRS Closes 35 Percent of Low-Income Audits Without a Response From the Taxpayer**

In FY 2019, the IRS closed nearly 361,000 audits of individual taxpayers with income below \$50,000. Similar to prior years, it closed 35 percent of these audits without a response from the taxpayer. About 14 percent of these nonresponsive taxpayers may have been unaware of the IRS audit because the IRS's initial audit contact notices were returned as undeliverable.<sup>34</sup> Higher income taxpayers didn't respond to audit contact notices only 20 percent of the time, with less than six percent of these audit-related correspondences being returned undeliverable.<sup>35</sup>

The discrepancy in the IRS's ability to deliver mail to and achieve responses from lower income taxpayers undergoing *correspondence* audits is directly related to the audit procedures employed by the IRS. When the IRS does not receive a response from taxpayers undergoing correspondence audits – the audits most often experienced by low-income taxpayers – Internal Revenue Manual procedures advise that the case will simply “be moved into the next step in the examination process.”<sup>36</sup> So, in essence, one and done. If the taxpayer does not respond to the initial letter, the IRS will typically issue a second correspondence audit letter that includes the IRS's examination report proposing adjustments to the taxpayer's tax return that reduce or eliminate a credit or propose additional tax, penalties, and interest. If no response is received, the IRS automatically issues a notice of deficiency.<sup>37</sup> The notice of deficiency advises the taxpayer of his or her right to petition the Tax Court and satisfies the IRS's requirement to provide notice to the taxpayer before making an assessment on the taxpayer's account if no petition is filed (assessment by default). When IRS correspondence is returned to the IRS as undeliverable, examiners conduct further research of the IRS's internal data to determine if the IRS received notification of an updated address.<sup>38</sup> This rule comes with a caveat: “In no event should databases or information outside of IRS systems be consulted for addresses.”<sup>39</sup> This may be a good cost-cutting measure, but it is not good customer service or a procedure that supports protecting taxpayer rights. Typically, the notice of deficiency is issued prior to the filing of the subsequent tax return that may contain a change of address.

IRS *field* audit procedures for resolving no-response cases and undeliverable mail are more extensive. In these cases, examiners must determine why the taxpayer is not responding, and follow-up attempts must be made to contact the taxpayer – to include contacting the taxpayer by phone.<sup>40</sup> When an initial contact letter or certified correspondence is returned undeliverable, field examiners may research the IRS's internal data to determine if an updated address exists. Should this prove unsuccessful, field examiners may also consult external sources to obtain additional information that may be useful for locating a more current address. If the examiner is still unsuccessful, he or she takes more steps to locate the taxpayer, including completing a



Form 4759, Address Information Request - Postal Tracer, and even making third-party contacts to obtain additional address information.<sup>41</sup>

IRS correspondence audit programs should not be an all-or-nothing approach. By incorporating procedures that would require correspondence examiners to consult some select information outside of IRS systems to locate taxpayers whose mail has been returned as undeliverable, and by requiring at least one constructive follow-up attempt to reach unresponsive taxpayers or taxpayers whose mail has been returned as undeliverable, the IRS may see an increase in low-income taxpayer audit participation and a corresponding decline in no-response cases, audit reconsideration cases, and cases petitioned to the U.S. Tax Court.<sup>42</sup>

### **IRS Procedures Should Facilitate Taxpayer Follow-Up**

Reaching taxpayers is not always easy. A recent Pew Research Center study found that eight out of ten Americans won't answer their cellphones for unknown callers, perhaps limiting the IRS's ability to make successful taxpayer contacts – even if it tried.<sup>43</sup> When taxpayers don't answer the phone, the IRS is often unable to leave messages or send emails that would contain enough information to explain whom the taxpayer needs to contact and why.<sup>44</sup>

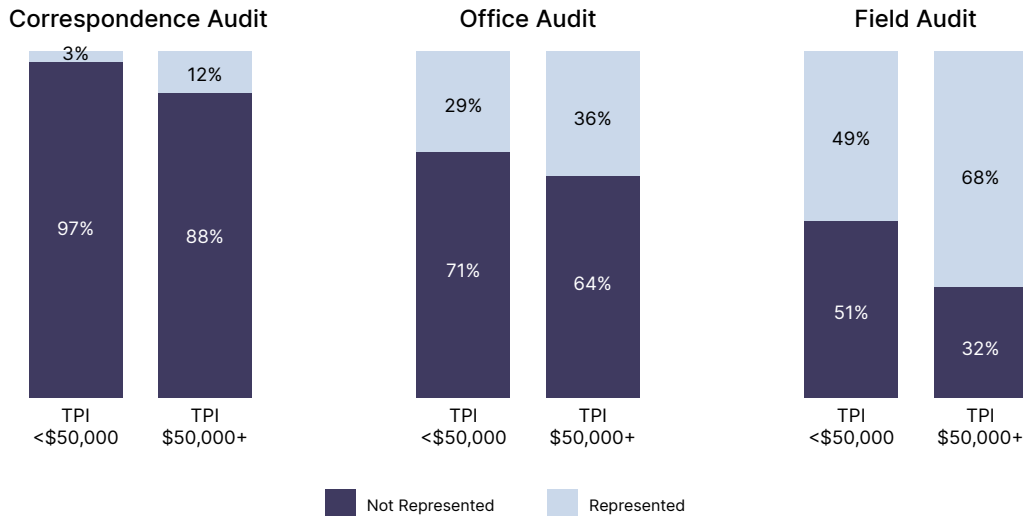
Since 1998, the IRS has provided an area within the signature section of Form 1040, U.S. Individual Income Tax Return, for taxpayers to voluntarily provide a phone number. Starting with the 2019 Form 1040, the IRS requested a taxpayer's email address. Although taxpayers may provide this helpful information, it is rarely used by correspondence examiners to resolve undeliverable mail issues or to contact unresponsive taxpayers. This is not only because IRS procedures do not require correspondence examiners to do so but also because contact attempts are often unproductive when taxpayers don't answer their phone or anticipate a call from the IRS.<sup>45</sup> Use of email could resolve this contact dilemma.

Under IRS procedures, employees cannot leave phone messages that contain tax or other confidential information without obtaining prior approval from the taxpayer.<sup>46</sup> Also, despite asking taxpayers to voluntarily provide an email address, the IRS does not authorize the use of email to contact unresponsive taxpayers undergoing correspondence audits or taxpayers whose mail has been returned undeliverable.<sup>47</sup> The IRS should reconsider these procedures or conduct a study as to the impact of using email to engage taxpayers earlier in the process.

TAS has conducted several studies of EITC audit processes.<sup>48</sup> The findings of these studies repeatedly showed that lack of sufficient communication was a key factor hindering taxpayers' resolution of their audits. Besides requiring follow-up contacts, the IRS should implement procedures to allow all examiners to securely contact taxpayers using the telephone and email information taxpayers already include on their Form 1040 and include an area for taxpayers to authorize the IRS to leave phone and email messages (something perhaps as simple as a box to check). Improving the IRS's ability to securely contact taxpayers via phone and email could increase low-income taxpayer audit participation, reduce the volume of cases closed as no-response, and decrease requests for audit reconsideration.

### **Lower Income Taxpayers Are Less Likely to Be Represented by Tax Professionals**

Limited personal interaction is particularly impactful to low-income taxpayers who must rely solely on the IRS's correspondence audit toll-free telephone services for answers to their audit and tax-related questions. FY 2019 audit data showed that although 55 percent of the low-income taxpayers audited used a tax professional to prepare their returns, they had the lowest rate of professional representation during the audit process.<sup>49</sup> Nearly half of the individual audits the IRS conducted were correspondence audits on low-income taxpayers, and only three percent of these taxpayers retained professional representation during the audit process, as shown in Figure 2.9.6.<sup>50</sup>

**FIGURE 2.9.6<sup>51</sup>****FY 2019 Individual Taxpayer Closed Audits – Representation by Type of Audit****Increased IRS Interaction With Unrepresented Taxpayers Is Necessary**

TAS has long advocated for increased personal interaction and the assignment of correspondence audit cases to examiners who could serve as the taxpayer's single point of contact for questions and concerns.<sup>52</sup> The IRS has repeatedly rejected calls for one-to-one interaction and the direct assignment of correspondence audit cases, indicating these recommendations were not feasible.<sup>53</sup> The IRS cites the volume of cases in relationship to the number of examiners as a significant barrier to altering its existing approach, noting that "in FY 2019, only 442 SB/SE Correspondence Examiners were responsible for conducting 224,238 correspondence examinations" and adding that "assigning these cases to one examiner would not add value to the process but would limit the ability to utilize the automatic process to achieve efficiencies."<sup>54</sup> Similarly, W&I indicated that in FY 2019, 652 examiners were responsible for completing 335,131 correspondence audits.<sup>55</sup> Given the volume of correspondence audits conducted and the limited staff assigned, the IRS must prioritize its work to maximize taxpayer participation in audits. Absent a change in the number of audits conducted or the allocation of additional resources to IRS's correspondence audit programs, incorporating personal contact and assigning cases to an examiner who can serve as the taxpayer's point of contact may be a heavy lift, but it is necessary from a customer service perspective. Once a taxpayer contacts the IRS, an examiner should be assigned as the taxpayer's point of contact for the entire audit process.

The IRS has harnessed the use of some technology in its effort to improve the customer experience. Since 2016, the IRS has offered taxpayers its Online Account application and increased its capabilities.<sup>56</sup> The IRS should increase its Online Account capabilities to include the ability to upload correspondence and attach documents, chat with an IRS representative, or change a mailing address.<sup>57</sup> Online Account could provide an alternative for taxpayers unable to reach live assistance over the correspondence audit toll-free phone service – provided taxpayers can frame their inquiry to generate a helpful response. W&I recently introduced customer callback on its correspondence audit toll-free phones to reduce customer hold time, and SB/SE is scheduled to implement customer callback in January 2022. Additionally, the SB/SE correspondence audit program has implemented Taxpayer Digital Communications (TDC) to allow taxpayers to interact with the IRS electronically.<sup>58</sup> W&I is tentatively scheduled to implement the use of TDC in FY 2022, allowing more low-income taxpayers to interact with IRS electronically during the correspondence audit process.<sup>59</sup> Most recently, the IRS implemented a new Documentation Upload Tool (DUT) that will allow all correspondence audit

taxpayers to submit documentation through a smartphone or computer device.<sup>60</sup> Though Online Account, customer callback, TDC, and DUT all will positively complement the correspondence audit process, they are not substitutes for personal interactions that could increase low-income taxpayer participation in the audit process, build trust, and engage and educate low-income taxpayers.

### Costs to the IRS of Not Assisting Taxpayers During the Correspondence Audit Process

Low agreement, high no-response rates result in additional downstream costs for the IRS and additional burden to low-income taxpayers.<sup>61</sup> Some of these costs include the cost of audit reconsiderations, the cost of TAS involvement in case resolution, and costs expended by Appeals and IRS Counsel to ultimately bring these unagreed cases to resolution. And the IRS may further expend unnecessary collection resources to pursue the collection of tax debts not owed to the IRS.

The downstream per-hour cost associated with unagreed audit activities is generally higher than the per-hour cost of simply providing increased customer service during the correspondence audit process. As shown in Figure 2.9.7, the average per-hour cost of a W&I and SB/SE Tax Examiner is approximately \$24.80 an hour – a cost duplicated when audits must be revisited for audit reconsideration purposes. When taxpayers seek TAS assistance, the average cost of this assistance is \$34.88 per hour. When TAS provides the taxpayer with audit reconsideration assistance, the average cost to the IRS rises to \$59.68 an hour, to accommodate both the cost of TAS assistance and the cost of the tax examiner who must reconsider the initial audit determination. Though the liability may be in dispute, IRS collection activity may commence and continue until the liability is resolved through full payment, a payment arrangement, or the abatement of the disputed tax assessed, representing yet another potentially unnecessary cost to the IRS. Should Appeals and Counsel involvement become necessary, the per-hour cost is greater still.

The cost of unagreed correspondence audits is difficult to capture. Figure 2.9.7 reflects only a portion of these costs. Some costs not included are the cost of the IRS toll-free telephone assistant who answers a call from a taxpayer seeking information on how to dispute the assessment long after the audit has closed or the cost of the Submission Processing examiner receiving a claim filed to reverse a disputed correspondence audit assessment. Although this discussion focuses on low-income taxpayer correspondence audits, 80 percent of the individual audits conducted by IRS in FY 2019 were conducted via correspondence.<sup>62</sup> The downstream costs and communication barriers associated with the correspondence audit process are not strictly limited to low-income filers and can apply to all audits completed by correspondence.

**FIGURE 2.9.7, FY 2019 Downstream Costs Associated With Unagreed Low-Income Audits<sup>63</sup>**

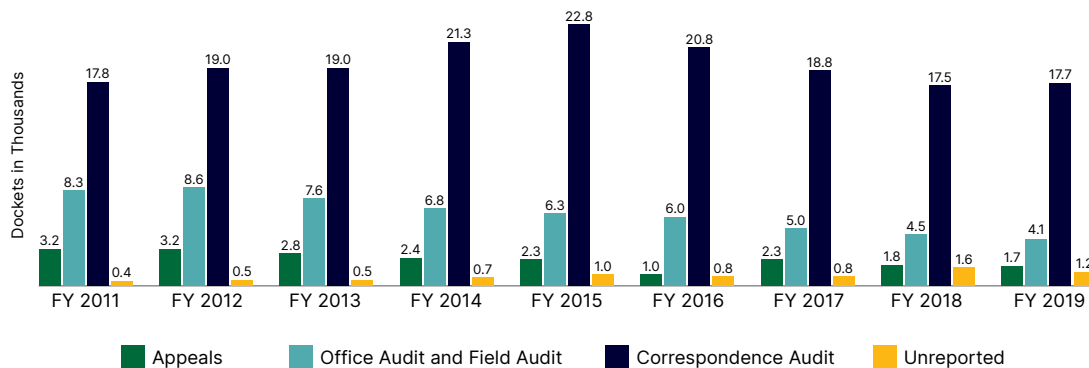
Downstream Process	Resource Type	Average Direct Resolution Cost Per Hour
Automated Collection Service	Tax Examiner – Automated Collection System (ACS)	\$21.62
W&I Correspondence Audit Reconsideration	W&I Tax Examiner	\$24.80
SB/SE Correspondence Audit Reconsideration	SB/SE Tax Examiner	\$24.79
TAS Involvement for Resolution	TAS Case Advocate	\$34.88
Field Collection	Revenue Officer	\$32.36
Appeals Involvement for Resolution	Appeals Officer	\$55.77
IRS Counsel Involvement for Resolution	Counsel Attorney	\$83.77

### Tax Court Petitions and Appeals Involvement

The highest volume of petitions filed with the U.S. Tax Court resulted from audits conducted via correspondence, as shown in Figure 2.9.8.<sup>64</sup> Of the 24,700 petitioned cases in FY 2019, 17,700 were the product of a correspondence audit. Although a small fraction of the 24,700 petitions were tried and decided by the U.S. Tax Court (about one percent), most were resolved through settlement agreements reached with the taxpayer by the IRS Independent Office of Appeals (43 percent) and the IRS Office of Chief Counsel (25 percent); another portion (26 percent) was defaulted or dismissed.<sup>65</sup> Though IRS Appeals and Counsel consider the hazards of litigation and have settlement authority not granted to tax examiners, likely some portion of the 17,700 correspondence audit cases could have been brought to mutual resolutions if personal interactions were incorporated into the correspondence audit process.

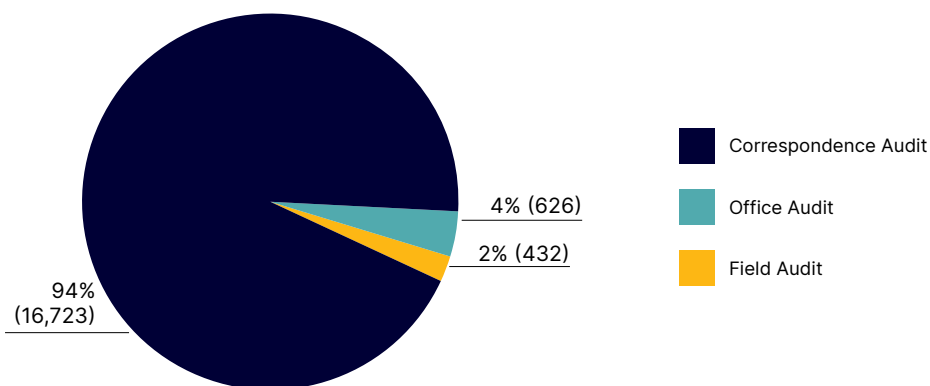
**FIGURE 2.9.8<sup>66</sup>**

**Source of Cases Petitioned to Tax Court for FYs 2011-2019**



### Audit Reconsideration

An audit reconsideration is an administrative process the IRS uses to reevaluate the results of a prior audit where a tax credit was reversed, or an additional tax was assessed and remains unpaid. If the taxpayer disagrees with the original determination, he or she must provide new information not previously considered during the original examination.<sup>67</sup> As shown in Figure 2.9.9, 94 percent of the audit reconsiderations conducted by the IRS in FY 2019 resulted from correspondence audits. Forty-four percent of the correspondence audit reconsiderations requested in FY 2019 resulted from original correspondence audits closed because the IRS had no record of a response from the taxpayer or because the taxpayer's audit-related correspondence was returned to the IRS as undeliverable.<sup>68</sup>

**FIGURE 2.9.9<sup>69</sup>****Individual Taxpayer Audits Reconsidered in FY 2019 by Original Audit Type**

By implementing a follow-up contact to reach non-responsive taxpayers, conducting more thorough research to locate taxpayers whose mail had been returned undeliverable, and making it easier for taxpayers to reach an examiner who can address questions and concerns that arise during the audit process, the IRS could reduce the volume of audit reconsideration cases received.<sup>70</sup>

**TAS Involvement for Resolution**

TAS assists taxpayers experiencing hardship, taxpayers seeking help to resolve tax problems not resolved through normal channels, or taxpayers who believe that an IRS system or procedure is not working as it should.<sup>71</sup> In FY 2019, TAS received requests for assistance from about 15,000 low-income taxpayers with issues arising from EITC-related IRS correspondence audits, making this issue the second highest volume issue that brought taxpayers to TAS.<sup>72</sup> In addition, TAS received requests for assistance from about 1,300 low-income taxpayers with non-EITC-related IRS audits and approximately 1,600 low-income taxpayers with the audit reconsideration of previous EITC-related audit determinations.<sup>73</sup> An analysis of TAS results for these low-income taxpayer cases showed that by working directly with an assigned TAS Case Advocate, 55 percent of these taxpayers received the full relief (resolution) sought with their IRS-related difficulty, while another 12 percent received partial relief. Thus, the interaction and assistance provided by an assigned TAS Case Advocate resulted in full or partial resolution in 67 percent of these cases received in TAS.<sup>74</sup>

TAS is often able to assist low-income taxpayers by helping them explore an array of documentation to substantiate an audited item in question and by ensuring that the documentation submitted is appropriately and timely reviewed by an IRS examiner. Though these cases meet TAS's case criteria, using downstream resources such as TAS could be reduced by providing increased access to assistance during the correspondence audit process, thus freeing up TAS resources for resolution of more complex, less process-driven issues. TAS resources are yet another cost to consider when assessing the total cost of audit resolution and taxpayer burden.

**Collection**

Nearly 88,000 of the low-income taxpayers audited during FY 2019 via correspondence were placed into a collection stream requiring the use of IRS collection resources to make payment arrangements, contest collection actions, or evaluate the taxpayer's ability to pay. Although the use of collection resources to collect audit assessments is not unique to low-income taxpayers, low-income correspondence audits produced the highest percentage (45 percent) of taxpayers who remain in currently not collectible status as of October 28, 2021.<sup>75</sup>

**FIGURE 2.9.10, Collection Activity for FY 2019 Correspondence Audit Assessments for Individual Taxpayers With Total Positive Income of Less Than \$50,000**

Collection Activity	Count
Taxpayers Who Were Ever in ACS or Field Collection After Audit	87,801
Taxpayers Who Entered Into an Installment Agreement After Audit	24,849
Taxpayers Who Submitted an Offer in Compromise After Audit	440
Taxpayers Who Filed Bankruptcy After Audit	1,481
Taxpayers Currently in Currently Not Collectible Status	39,238
Taxpayers Who Requested a Collection Due Process Hearing	238
Taxpayers Who Requested an Equivalency Hearing	40

### Taxpayer Burden

According to *Administrative Burden*, a recently published book that analyzes the impact of administrative burden on individuals participating in government programs, significant burdens or “costs” associated with participation in government assistance programs often involve learning costs associated with determining eligibility, psychological costs that encompass an individual’s need for autonomy, the perceived justice associated with those burdens, and compliance costs that involve access to the assistance needed to comply with the laws.<sup>76</sup>

The IRS, the tax preparation industry, and other organizations have educated and assisted low-income taxpayers with *claiming and reporting* EITC and other refundable credits; however, there are few resources available when these low-income taxpayers must later *substantiate* these credits during the audit process.<sup>77</sup> Though it may be easy to dismiss unresponsive taxpayers as irresponsible, “the stresses of poverty may ... amplify the effects of burdens, making people who feel threatened or exhausted more likely to make poor long-term choices” and more likely to view their financial choices from a short-term perspective.<sup>78</sup> Low-income taxpayers may not respond to audit requests for documentation due to their perception of the burden involved in substantiating the credit amount rather than an inability to qualify for the credit.

A robust picture of the correspondence audit process from a stakeholder perspective is in the following statement that TAS received:

...There is no agent to talk to. You receive the notification you are being examined and request for documents. You better send your documents certified, or they will not acknowledge receipt of them. Even though they have your documents they will ignore them and send you a Revenue Agent’s Report. You may get 15 days to appeal from the date of the letter. The mail service is so bad the 15-day deadline is likely already expired when you receive the RAR [Examination Report] report and letter so you can’t file a timely appeal request.

Shortly thereafter, you get a 90-day letter notice of deficiency. So, you file a petition as a *pro se* taxpayer in the tax court. Hopefully the tax court sends your case to appeals and you get a chance to finally talk to somebody. The whole process may be resolved in a year if you are lucky. This is a very bad result for the taxpayer and the Internal Revenue Service. The taxpayer incurs additional representation cost, tax court filing fee, and penalty and interest on any balance due amounts. It’s bad for IRS because instead of trying to resolve the issues at the initial examination it ties up the resources of the tax court and appeals. You might wind up in appeals anyway, but there isn’t a need for the extra step and the resulting delays that will occur...<sup>79</sup>



## Legislative Considerations for Assisting Low-Income Taxpayers

Low-income taxpayer correspondence audits can involve a variety of issues, but many involve the verification of EITC and other refundable credits. The IRS conducts these audits almost exclusively via correspondence, ignoring the complexity of computational, legal, and factual issues the taxpayer must navigate. Both TAS and the IRS agree with the need for legislative changes to simplify the refundable credits' eligibility criteria.<sup>80</sup> Simplified requirements would help taxpayers understand the refundable credits for which they are eligible, reduce overclaims, and make the audit process simpler, faster, and less burdensome for the IRS and for taxpayers.<sup>81</sup>

Besides legislation geared toward simplifying refundable credit eligibility, both TAS and the IRS agree with the need for Congress to consider legislation that would provide the IRS increased oversight of paid tax return preparers.<sup>82</sup> Granting the IRS the authority to require minimum standards for an estimated 400,000 paid tax return preparers without credentials could reduce the number of unscrupulous preparers filing erroneous and fraudulent tax returns – an action that would benefit both low-income taxpayers who often fall prey to preparer misconduct associated with refundable credits and the IRS charged with resolving these overclaims – most often through the correspondence audit process.<sup>83</sup>

## CONCLUSION AND RECOMMENDATIONS

As discussed, in FY 2019, 55 percent of low-income taxpayers relied on tax professionals to prepare their return, but only three percent of these low-income taxpayers received professional assistance during the correspondence audit process.<sup>84</sup> Only 25 percent of these low-income taxpayers agreed with correspondence audit determinations.<sup>85</sup> This low agreement rate often leads to using additional or higher cost downstream resources to achieve final resolution. The IRS should consider the totality of the low-income taxpayer's interactions with the agency and design its correspondence audit programs to meet taxpayer needs. Providing increased access to service and integrating personal interactions during the correspondence audit process provides for overall efficiency. Providing service that reduces taxpayer burden while promoting taxpayer education and compliance outweighs short-term gains recognized by using automated correspondence to drive cases to closure.

## Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Assign the case to an individual examiner who can serve as the taxpayer's point of contact once a taxpayer contacts the IRS in response to his or her initial correspondence audit contact letter and provide the examiner's direct phone number.
2. Increase phone staffing to deliver an 80 percent minimum correspondence audit toll-free telephone Level of Service.
3. Implement additional external resources to locate taxpayers whose correspondence audit-related mail has been returned undeliverable, similar to resources the IRS uses in its field examinations.
4. Implement a personal contact attempt to reach non-responsive taxpayers and taxpayers whose mail has been returned undeliverable.
5. Add a consent mechanism to Form 1040, U.S. Individual Income Tax Return, that would allow taxpayers to authorize the IRS to leave telephone messages or make email contacts to reach taxpayers.
6. In collaboration with TAS, establish a working group to explore the root causes that contribute to the low response rates of low-income taxpayers undergoing the correspondence audit process and implement a pilot program to decrease the high default and non-response rates.
7. Conduct a proof-of-concept project that would assign correspondence audit cases to an examiner who could serve as the taxpayer's single point of contact once the taxpayer sends in correspondence or reaches a correspondence audit assistor by phone. This project should involve data collection to

determine if the IRS-perceived barriers to correspondence audit case assignment are valid, while also measuring customer satisfaction and responsiveness results.

8. Implement the use of new Online Account features such as text chat, document upload, and address change options in the correspondence audit programs.

### Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Restructure the EITC to make it simpler for taxpayers and reduce improper payments.<sup>86</sup>
2. Authorize the IRS to establish minimum competency standards for federal tax return preparers.<sup>87</sup>

### RESPONSIBLE OFFICIALS

Douglas O'Donnell, Deputy Commissioner, Services and Enforcement

De Lon Harris, Commissioner, Examination and Operations Support, Small Business/Self-Employed Division

Kenneth Corbin, Commissioner, Wage and Investment Division

### IRS COMMENTS

Correspondence Exam is critical to fair and balanced tax administration. The IRS designed Correspondence Exam to work single issue (non-complex) and single year cases that can easily be resolved via mail, allowing for broader geographic coverage. The program enables us to handle tax compliance issues in a cost-efficient and prompt manner. It also minimizes taxpayer burden by enabling them to resolve the matter by mail, instead of having to take time off to appear in person.

When we audit a taxpayer via correspondence, we make meaningful efforts to reach them before we resolve their case. If our initial letter is returned to us as undeliverable, we search internal sources to identify the taxpayer's updated address. We give taxpayers approximately 165 days to respond to us before making an adjustment. We issue two letters that allow 30 days each for the taxpayer to respond. If we do not hear back, we then issue a Statutory Notice of Deficiency, which allows taxpayers 105 days to respond before we can close the case. This timeline is extended when the taxpayer chooses to be involved in the audit. Only after a taxpayer does not reply to an examination letter (in writing or with a telephone call), and the suspense period has expired, is the case moved into the next step in the examination process.

Taxpayers calling the Correspondence Exam toll-free line are routed to the next available assistor. Limiting taxpayers' access to one single point of contact could increase taxpayer burden, as taxpayers will no longer have access to all available assistants who answer calls 12 hours per day, five days a week.

We continue to make improvements in Correspondence Exam that make it easier for taxpayers to communicate with us and bring their case to resolution. Regardless of the method in which a taxpayer chooses to interact with IRS, we focus on providing a positive customer experience. For instance, some of our phone lines provide informational pre-recorded messages on who is qualified to claim various credit(s), the documents needed to support the credit, instructions for finding related information on IRS.gov, and how to use the Documentation Upload Tool (DUT) to submit documentation. In January 2021, the IRS implemented a Fast-Track option line for taxpayers responding to a W&I Correspondence Exam who only want to know if the IRS received their

documentation. This option reroutes incoming calls to an assistor to provide taxpayers with expedited information on the receipt and status of their correspondence. In January 2022, the IRS will add a customer callback feature to the SB/SE Correspondence Exam line.

In an effort to modernize services, Correspondence Exam is implementing various digitalization initiatives. We plan to scan responses directly into a taxpayer's file upon receipt, which will allow phone assistants in any site to access this data. In addition, the correspondence exam functions within both SB/SE and W&I implemented the DUT in September 2021, through which taxpayers can upload supporting documents through IRS.gov. We have updated the toll-free phone script to inform taxpayers of the availability of the DUT, and information on using the DUT will be added to a correspondence reply coversheet in early 2022. Increased use of digitalization will improve customer service by increasing data accessibility.

Correspondence Exam continues to improve communications with taxpayers through the expansion of Taxpayer Digital Communications (TDC) secure email to all five SB/SE campuses. Most any taxpayer faced with a correspondence audit has the option to participate. This allows them to submit documents through secure email while communicating with a single point of contact, usually the last tax examiner who worked their case.

We redesigned TDC Letter 566-T, Initial Contact-Secure Messaging, and added a QR code that takes taxpayers to the TDC sign up page, making the process to utilize TDC as easy as possible. We have also improved the process for taxpayers and representatives to authenticate their identity when opting into TDC secure email. The new authentication system – Secure Access Digital Identity (SADI) – makes authentication easier for taxpayers. It is our expectation that as more taxpayers take advantage of TDC, the IRS will continue to see a high level of customer satisfaction, currently at 82.3 percent. We will continue to leverage available technology, as our resources permit, to enhance taxpayers' experience when interacting with the IRS.

## TAXPAYER ADVOCATE SERVICE COMMENTS

The IRS views correspondence audits as “non-complex;” however, these audits can be challenging for low-income taxpayers requiring personal interaction to understand and navigate the correspondence audit process. Although IRS electronic communication options will positively complement the correspondence audit process, they are not substitutes for personal interactions that could increase low-income taxpayer participation, build trust, and engage and educate low-income taxpayers. While the tax examiners staffing correspondence audit toll-free telephone lines may be sufficiently trained, this is of little value to taxpayers unable to reach a tax examiner for assistance due to inadequate Levels of Service. Likewise, the length of the timeframe provided for taxpayer response is of little value to taxpayers whose correspondence audit notifications are returned undeliverable or taxpayers unable to respond absent needed assistance. Increased efforts to reach unresponsive taxpayers and taxpayers whose audit notifications have been returned undeliverable, along with increased Levels of Service to include the assignment of correspondence audit cases to a tax examiner who can serve as a

taxpayer's single point of contact, would reduce barriers that hinder low-income taxpayers, eliminate the unnecessary use of IRS resources, and ensure the protection of taxpayer rights.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Assign the case to an individual examiner who can serve as the taxpayer's point of contact once a taxpayer contacts the IRS in response to his or her initial correspondence audit contact letter and provide the examiner's direct phone number.
2. Increase phone staffing to deliver an 80 percent minimum correspondence audit toll-free telephone Level of Service.
3. Implement additional external resources to locate taxpayers whose correspondence audit-related mail has been returned undeliverable, similar to resources the IRS uses in its field examinations.
4. Implement a personal contact attempt to reach non-responsive taxpayers and taxpayers whose mail has been returned undeliverable.
5. Add a consent mechanism to Form 1040, U.S. Individual Income Tax Return, that would allow taxpayers to authorize the IRS to leave telephone messages or make email contacts to reach taxpayers.
6. In collaboration with TAS, establish a working group to explore the root causes that contribute to the low response rates of low-income taxpayers undergoing the correspondence audit process and implement a pilot program to decrease the high default and non-response rates.
7. Conduct a proof-of-concept project that would assign correspondence audit cases to an examiner who could serve as the taxpayer's single point of contact once the taxpayer sends in correspondence or reaches a correspondence audit assistor by phone. This project should involve data collection to determine if the IRS-perceived barriers to correspondence audit case assignment are valid, while also measuring customer satisfaction and responsiveness results.
8. Implement the use of new Online Account features such as text chat, document upload, and address change options in the correspondence audit programs.

### Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Restructure the EITC to make it simpler for taxpayers and reduce improper payments.<sup>88</sup>
2. Authorize the IRS to establish minimum competency standards for federal tax return preparers.<sup>89</sup>

## Endnotes

- 1 Internal Revenue Manual (IRM) 4.19.13.12, No Response Cases (July 30, 2020).
- 2 IRS, Compliance Data Warehouse (CDW), Audit Information Management System (AIMS) Closed Case Data FY 2019 individual audits and Individual Returns Transaction File (IRTF) (Nov. 2021). IRM 4.1.1.1.6, Terms (Dec. 25, 2017).
- 3 IRS, CDW, AIMS Closed Case Data FY 2019 individual audits (Nov. 2021). Correspondence audits include audits closed by campus tax examiners in either the Wage and Investment (W&I) or Small Business/Self-Employed (SB/SE) Operating Divisions.
- 4 IRM 4.19.13.11, Monitoring Overage Replies (July 20, 2020) (outlining overage procedures, including the IRS goal to “ensure a response is initiated to taxpayers within 30 calendar days of the IRS received date of the correspondence;” issuance of Letter 3500, Interim Letter, to notify the taxpayer of the IRS’s receipt of his or her mail and advise him or her that IRS will respond within 75 days; and a statement that, “[t]here may be times when a default response timeframe of 75 days is not achievable. More time may be needed because of the volume of overaged inventory.”).
- 5 IRS responses to TAS information requests (Aug. 30, 2021; Sept. 1, 2021).
- 6 IRS, CDW, AIMS Closed Case Data FY 2019 individual audits and IRTF (Nov. 2021). Correspondence audits include audits closed by campus tax examiners in either W&I or SB/SE.
- 7 IRS, CDW, AIMS Closed Case Data FY 2019 individual audits and IRTF (Nov. 2021). See also IRM 4.1.1.1.6, Terms (Dec. 25, 2017) (defining TPI as only total positive values from wages, interest, dividends, other income, distributions, Schedule C net profits, and Schedule F net profits. Losses are treated as a zero). For purposes of this discussion, taxpayers with TPI below \$50,000 are being referred to as “low-income taxpayers.” For a family of four, this amount is significantly below the 250 percent of the Federal Poverty Level ceiling under which taxpayers qualify for the assistance of Low Income Taxpayer Clinics (LITCs). IRC § 7526(b)(1); IRS, Low Income Taxpayer Clinics (LITC), <https://www.taxpayeradvocate.irs.gov/about-us/low-income-taxpayer-clinics-litc> (last visited Dec. 22, 2021).
- 8 IRS, CDW, AIMS Closed Case Data FY 2019 individual audits, IRTF, and Individual Master File (IMF) Transaction History Table (Sept. 2021). Analysis does not include audited non-filed individual tax returns. Representation was defined as a power of attorney being on file with the IRS during the audit. Most low-income taxpayers are audited by W&I examiners. W&I correspondence audit toll-free telephone service typically reflects a 40 percent Level of Service, lower than the 60 percent Level of Service typically experienced on SB/SE correspondence audit toll-free telephone lines. See Figures 2.9.3 and 2.9.4.
- 9 IRM 4.19.13.12, No Response Cases (July 30, 2020).
- 10 See IRS, Taxpayer Bill of Rights, <https://www.irs.gov/taxpayer-bill-of-rights>. See also IRC § 7803(a)(3)(B).
- 11 IRS, CDW, AIMS Closed Case Data FY 2019 individual audits (Sept. 2021). For purposes of this Most Serious Problem, correspondence audits include audits closed by campus tax examiners in either W&I or SB/SE; office audits include audits closed by tax compliance officers in SB/SE; and field audits include audits closed by revenue agents in SB/SE and the Large Business and International (LB&I) Division.
- 12 IRM 4.19.14.1.2, Authority (Dec. 16, 2020).
- 13 National Taxpayer Advocate 2015 Annual Report to Congress 235 (Introduction: *The IRS Can Do More to Improve Its Administration of the Earned Income Tax Credit and Increase Future Compliance Without Unduly Burdening Taxpayers and Undermining Taxpayer Rights*); The Urban Child Institute, *Poverty Can Jeopardize the Development of Literacy and Early Reading Habits* (Aug. 30, 2012), <http://www.urbanchildinstitute.org/articles/research-to-policy/policy/poverty-can-jeopardize-the-development-of-literacy-and-early-reading-habits>; Brookings Institute, *Investing in English Skills: The Limited English Proficient Workforce in U.S. Metropolitan Areas* (Sept. 24, 2014), <http://www.brookings.edu/research/reports/2014/09/english-skills/#/M10580>.
- 14 National Taxpayer Advocate 2015 Annual Report to Congress 235-236 (Introduction: *The IRS Can Do More to Improve Its Administration of the Earned Income Tax Credit and Increase Future Compliance Without Unduly Burdening Taxpayers and Undermining Taxpayer Rights*); Federal Deposit Insurance Corporation (FDIC), *2013 FDIC National Survey of Unbanked and Underbanked Households* 17 (Oct. 2014). For the purposes of this survey, “unbanked” means that no one in the household had a savings or checking account. U.S. Census Bureau, Current Population Survey, 2013 Annual Social and Economic Supplement (Nov. 2013).
- 15 National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 3, at 13 (*Special Report to Congress: Making the EITC Work for Taxpayers and the Government*); Elaine Maag, H. Elizabeth Peters & Sarah Edelstein, *Increasing Family Complexity and Volatility: The Difficulty in Determining Child Tax Benefits* 10 (2016).
- 16 See IRM 4.19.14, Liability Determinations, Refundable Credit Strategy (Jan 1, 2021).
- 17 IRS, CDW, AIMS Closed Case Data FY 2019 individual audits (Sept. 2021). For purposes of this Most Serious Problem, correspondence audits include audits closed by campus tax examiners in either W&I or SB/SE; office audits include audits closed by tax compliance officers in SB/SE; and field audits include audits closed by revenue agents in SB/SE and LB&I. Analysis does not include audited non-filed returns.
- 18 *Id.*
- 19 IRS, CDW, AIMS Closed Case Data FY 2019 individual audits and IRTF (Sept. 2021). For purposes of this figure, correspondence audits include audits closed by campus tax examiners in W&I or SB/SE; office audits include audits closed by tax compliance officers in SB/SE; and field audits include audits closed by revenue agents in SB/SE and LB&I. Analysis does not include audited non-filed returns.
- 20 National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress vol. 2, at 53 (*IRS Responses and National Taxpayer Advocate’s Comments Regarding Most Serious Problems Identified in the 2014 Annual Report to Congress*).
- 21 IRS, CDW, AIMS Closed Case Data FY 2019 individual audits (Sept. 2021). For purposes of this figure, correspondence audits include audits closed by campus tax examiners in W&I or SB/SE; office audits include audits closed by tax compliance officers in SB/SE; and field audits include audits closed by revenue agents in SB/SE and LB&I. Analysis does not include audited non-filed returns.
- 22 See Figures 2.9.3 and 2.9.4.
- 23 National Taxpayer Advocate 2020 Annual Report to Congress 106 (Most Serious Problem: *Correspondence Exams: Taxpayers Encounter Unnecessary Delays and Difficulties Reaching an Accountable and Knowledgeable Contact for Correspondence Audits*).
- 24 *Id.*
- 25 National Taxpayer Advocate Fiscal Year 2022 Objectives Report to Congress 108 (Appendix 1: *IRS Responses to Administrative Recommendations Proposed in the National Taxpayer Advocate’s 2020 Annual Report to Congress*).
- 26 FTE is used to quantify employment as a function of hours worked rather than by the number of individual employees. One FTE is also known as one work year.
- 27 IRS responses to TAS information requests (Aug. 30, 2021; Sept. 1, 2021).

## Most Serious Problem #9: Correspondence Audits

- 28 EPST does consider correspondence volume, which could affect the volume of phone calls received.
- 29 IRS response to TAS information request (Sept. 16, 2021).
- 30 IRS response to TAS information request (Sept. 17, 2021).
- 31 IRS responses to TAS information requests (Aug. 30, 2021; Sept. 1, 2021). Resource allocation was extrapolated based on Level of Service achieved with the reported resources utilized.
- 32 Unagreed cases are cases for which the taxpayer has not indicated agreement by signing an examination report or other consent for the assessment of tax.
- 33 IRS, CDW, AIMS Closed Case Data FY 2019 individual audits and IRTF (Sept. 2021). Analysis does not include audited non-filed individual tax returns. IRM 4.4.12.5.49.1, No Change Disposal Codes (June 1, 2002), defines a no change as cases closed by the examiner with no additional tax due (disposal code 1 and 2). In the IRS response to TAS fact check (Dec. 10, 2021), SB/SE notes disposal code 1 as an agreed closure. TAS does not agree with SB/SE's definition because these cases do not require agreement from the taxpayer since there is no additional tax liability (see, e.g., IRM 4.10.8.2.2, No Change with Adjustments Report Not Impacting Other Tax Year(s) (Sept. 12, 2014)), and the taxpayer's agreement or disagreement with the adjustment(s) as it pertains to another's year's liability is not known. Treasury Inspector General for Tax Administration (TIGTA) concurs with TAS's definition. See TIGTA, Ref. No. 2018-30-069, *Trends in Compliance Activities Through Fiscal Year 2017*, at 41 (Sept. 13, 2018). Totals may not add to 100 percent due to rounding.
- 34 IRS, CDW, AIMS Closed Case Data FY 2019 individual audits and IRTF (Sept. 2021). Analysis does not include audited non-filed returns.
- 35 *Id.*
- 36 IRM 4.19.13.12, No Response Cases (July 30, 2020).
- 37 *Id.*
- 38 IRM 4.19.13.14, Undeliverable Mail (July 30, 2020). The IRS may utilize information presented in a U.S. Postal Service "yellow sticker," allowing a taxpayer the opportunity to update his or her address. IRM 4.19.13.14, Undeliverable Mail (July 30, 2020).
- 39 IRM 4.8.9.8.2.5, Establishing the Last Known Address (July 9, 2013).
- 40 IRM 4.10.2.8.3, No Response/No Show Procedures (Nov. 4, 2016).
- 41 IRM 4.10.2.8.4, Undeliverable Initial Contact Letters (Sept. 9, 2019).
- 42 A "constructive" follow-up is a *bona fide* attempt to reach the taxpayer by phone or email if authorized. This would include more than one attempt to reach the taxpayer by phone, with attempts occurring at different times and on different weekdays, at times most conducive for reaching the taxpayer. As described in IRM 21.5.9.4.3(1)(a), Rejecting Unprocessable Carryback Applications/ Claims (Apr. 14, 2021).
- 43 Colleen McClain, Pew Research Center, *Most Americans Don't Answer Cellphone Calls From Unknown Numbers* (Dec. 14, 2020), <https://www.pewresearch.org/fact-tank/2020/12/14/most-americans-dont-answer-cellphone-calls-from-unknown-numbers/>.
- 44 IRM 10.5.1.6.7.2, Answering Machine or Voicemail (Dec. 31, 2020).
- 45 IRM 4.19.13.14, Undeliverable Mail (July 30, 2020); IRM 10.5.1.6.7.2, Answering Machine or Voicemail (Dec. 31, 2020).
- 46 IRM 10.5.1.6.7.2, Answering Machine or Voicemail (Dec. 31, 2020).
- 47 IRM 4.19.13.12, No Response Cases (July 30, 2020); IRM 4.19.13.14, Undeliverable Mail (July 30, 2020).
- 48 Find TAS EITC Research Studies at <https://www.taxpayeradvocate.irs.gov/research-studies/> under the "Earned Income Tax Credit Studies" menu option.
- 49 IRS, CDW, AIMS, IRTF, and IMF Transaction History for FY 2019 individual audits. Representation was defined as a power of attorney being on file with the IRS during the audit. Paid preparer designation was determined by the presence of a preparer Employer Identification Number (EIN) or Practitioner Tax Identification Number (PTIN) and excludes Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) returns. Analysis does not include audited non-filed returns.
- 50 IRS, CDW, AIMS Close Case Database and IMF Transaction History for FY 2019 (Sept. 2021). Correspondence audits include audits closed by campus tax examiners in W&I or SB/SE. Analysis does not include audited non-filed returns.
- 51 IRS, CDW, AIMS and IMF Transaction History for FY 2019 individual audits where a power of attorney was on file with the IRS during the audit. For purposes of this figure, correspondence audits include audits closed by campus tax examiners in W&I or SB/SE; office audits include audits closed by tax compliance officers in SB/SE; and field audits include audits closed by revenue agents in SB/SE and LB&I. Analysis does not include audited non-filed returns.
- 52 See National Taxpayer Advocate 2020 Annual Report to Congress 102-118 (Most Serious Problem: *Correspondence Exams: Taxpayers Encounter Unnecessary Delays and Difficulties Reaching an Accountable and Knowledgeable Contact for Correspondence Audits*); National Taxpayer Advocate 2018 Annual Report to Congress 126-141 (Most Serious Problem: *Correspondence Examination: The IRS's Correspondence Examination Procedures Burden Taxpayers and Are Not Effective in Educating the Taxpayer and Promoting Future Voluntary Compliance*); National Taxpayer Advocate 2014 Annual Report to Congress 134-144 (Most Serious Problem: *Correspondence Examination: The IRS Has Overlooked the Congressional Mandate to Assign a Specific Employee to Correspondence Examination Cases, Thereby Harming Taxpayers*).
- 53 See National Taxpayer Advocate 2020 Annual Report to Congress 116-117 (Most Serious Problem: *Correspondence Exams: Taxpayers Encounter Unnecessary Delays and Difficulties Reaching an Accountable and Knowledgeable Contact for Correspondence Audits*); National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 2, at 47-52 (Appendix 1: *IRS Responses to Administrative Recommendations Proposed in the National Taxpayer Advocate's 2020 Annual Report to Congress*); National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress vol. 2, at 48-51 (*IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2014 Annual Report to Congress*).
- 54 IRS response to TAS information request (Sept. 1, 2021).
- 55 IRS response to TAS information request (Aug. 30, 2021).
- 56 Most Serious Problem: *Online Accounts: IRS Online Accounts Do Not Have Sufficient Functionality and Integration With Existing Tools to Meet the Needs of Taxpayers and Practitioners, supra.*
- 57 *Id.*
- 58 IRS responses to TAS information requests (Aug. 30, 2021; Sept. 1, 2021).
- 59 IRS response to TAS information request (Aug. 30, 2021).
- 60 IRS SERP Alert 21A0316 (Sept. 2, 2021).
- 61 Downstream costs include the cost of resources expended to bring unagreed examination cases to a final resolution upon conclusion of the initial IRS audit.



## Most Serious Problem #9: Correspondence Audits

- 62 IRS, CDW, AIMS Closed Case Database FY 2019 individual audits (Oct. 2021). Correspondence audits include audits closed by campus tax examiners in W&I and SB/SE.
- 63 IRS responses to TAS information requests (Aug. 30, 2021; Sept. 1, 2021; Nov. 19, 2021); TAS financial data. In the absence of data, IRS Internal Revenue Officer average salary obtained at [https://www.glassdoor.com/Salary/IRS-Revenue-Officer-Salaries-E41427\\_D\\_K04,19.htm](https://www.glassdoor.com/Salary/IRS-Revenue-Officer-Salaries-E41427_D_K04,19.htm); ACS Tax Examiner average salary obtained at [https://www.glassdoor.com/Salaries/irs-tax-examiner-salary-SRCH\\_K00,16.htm?clickSource=searchBtn](https://www.glassdoor.com/Salaries/irs-tax-examiner-salary-SRCH_K00,16.htm?clickSource=searchBtn). See IRS response to TAS information request (Nov. 23, 2021).
- 64 See Office of Chief Counsel FY 2021, Q1 Report to the American Bar Association, 11-16.
- 65 *Id.* Resolution action was not identified for the remaining petitions (approximately five percent).
- 66 See Office of Chief Counsel FY 2021, Q1 Report to the American Bar Association, 11-16.
- 67 IRM 4.13.1.2(1), Definition of an Audit Reconsideration (Dec. 16, 2015).
- 68 IRS, CDW, AIMS Closed Case Database FY 2019 individual audits and Enforcement Revenue Information System (ERIS) Audit Reconsiderations through processing cycle 43 (Oct. 2021). Audit Reconsiderations of Individual Tax Returns by Disposal Code (No Show/No Response and Undelivered Mail Only) and Outcome for W&I and SB/SE Individual Correspondence Audits for FY 2019.
- 69 IRS, CDW, AIMS Closed Case Database FY 2019 individual audits and ERIS Audit Reconsiderations through processing cycle 43 (Oct. 2021). For purposes of this figure, correspondence audits include audits closed by campus tax examiners in W&I and SB/SE; office audits include audits closed by tax compliance officers in SB/SE; and field audits include audits closed by revenue agents in SB/SE and LB&I.
- 70 See EITC Audit Reconsideration Study at <https://www.taxpayeradvocate.irs.gov/research-studies/>. A prior TAS EITC Audit Reconsideration Study reflected that 42 percent of sampled taxpayers requested reconsideration of their EITC audit as a result of initial audits where the taxpayer did not respond or responded late to the IRS audit correspondence. According to the study, about 43 percent of the taxpayers seeking reconsideration obtained favorable audit reconsideration outcomes that allowed the taxpayer to retain about 96 percent of the EITC claimed on his or her original return. The study further showed that taxpayers received dramatically better audit results when contacted by telephone for the requested documentation, with the percentage of taxpayers receiving EITC increasing in direct proportion to the number of telephone contacts held. The study concluded that original audit results did not accurately reflect taxpayer EITC eligibility; rather, they merely showed that “the taxpayer flunked the IRS audit process.”
- 71 IRC § 7803(c)(2) identifies the functions of the National Taxpayer Advocate and TAS.
- 72 Taxpayer Advocate Management Information System (TAMIS), FY 2021 data with primary core issues 610, 630, and 639; IRS, CDW, AIMS and IRTF (Sept. 2021). The actual total was 1,304 for 610, Open Audit (Non-EITC); 14,617 for 630, Open EITC Audit; and 1,570 for 639, EITC Reconsideration.
- 73 TAMIS, FY 2021 data with primary core issues 610, 630, and 639; IRS, CDW, AIMS Closed Case database individual audits and IRTF (Sept. 2021).
- 74 *Id.*
- 75 IRS, CDW, AIMS Closed Case database in FY 2019 individual audits, IMF Transaction History file, IMF Status History file through cycle 43, and IRTF (Nov. 2021).
- 76 Pamela Herd and Donald Moynihan, *Administrative Burden* 23-26 (2018).
- 77 Low-income taxpayers may seek assistance from LITCs. LTC information is available at <https://www.taxpayeradvocate.irs.gov/about-us/low-income-taxpayer-clinics-litc> (last visited Dec. 22, 2021).
- 78 Pamela Herd and Donald Moynihan, *Administrative Burden* 30-31 (2018).
- 79 R. Self, personal communication to Erin Collins, National Taxpayer Advocate (June 9, 2021).
- 80 National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 115-118 (*Restructure the Earned Income Tax Credit (EITC) to Make It Simpler for Taxpayers and Reduce Improper Payments*); National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 3 (*Special Report to Congress: Making the EITC Work for Taxpayers and the Government*).
- 81 IRS response to TAS information request (Aug. 30, 2021).
- 82 *Id.*; National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 9-11 (*Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers*); National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 3, at 23 (*Special Report to Congress: Making the EITC Work for Taxpayers and the Government*).
- 83 IRS response to TAS information request (Aug. 30, 2021).
- 84 IRS, CDW, AIMS and IMF Transaction History for FY 2019 individual audits. Paid preparer designation was determined by the presence of a preparer EIN or PTIN and excludes VITA and TCE returns. Analysis does not include audited non-filed returns.
- 85 IRS, CDW, AIMS Closed Case Data FY 2019 individual audits and IRTF (Sept. 2021). Analysis does not include audited non-filed individual tax returns.
- 86 National Taxpayer Advocate 2022 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 115-118 (*Restructure the Earned Income Tax Credit (EITC) to Make It Simpler for Taxpayers and Reduce Improper Payments*); National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 3 (*Special Report to Congress: Making the EITC Work for Taxpayers and the Government*).
- 87 National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 9-11 (*Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers*); National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 3, at 23 (*Special Report to Congress: Making the EITC Work for Taxpayers and the Government*).
- 88 National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 115-118 (*Restructure the Earned Income Tax Credit (EITC) to Make It Simpler for Taxpayers and Reduce Improper Payments*); National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 3 (*Special Report to Congress: Making the EITC Work for Taxpayers and the Government*).
- 89 National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 9-11 (*Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers*); National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 3, at 23 (*Special Report to Congress: Making the EITC Work for Taxpayers and the Government*).

## COLLECTION: IRS Collection Policies and Procedures Negatively Impact Low-Income Taxpayers

### WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Many taxpayers have difficulty paying their tax liabilities. Low-income taxpayers in particular struggle to balance paying their tax debts with paying their basic living expenses. The IRS offers collection alternatives for financially struggling taxpayers, but the alternatives are underutilized. Some taxpayers seeking installment agreements (IAs) do not receive the relief from user fees Congress intended because IRS procedures for identifying low-income taxpayers are flawed. Requests for offers in compromise (OICs) have declined in seven of the past eight years. Currently not collectible (CNC)-Hardship status and offset bypass refund (OBR) relief are unnecessarily difficult to obtain. The IRS continues to issue automated collection notices despite backlogs in processing taxpayer correspondence and amended returns, and some taxpayers are surprised to learn they cannot dispute the merits of their underlying liabilities at a collection due process (CDP) hearing because IRS collection notices do not adequately explain their rights.

### EXPLANATION OF THE PROBLEM

#### Taxpayers Continue to Experience Premature Assessments and Collection Action as a Result of Backlogs

The impacts of COVID-19 and reduced staffing on processing amended returns and correspondence have caused long delays in responding to taxpayers, but the IRS's computer system continues to move forward and either initiates or continues with collection notices and activity. The IRS should postpone and hold all automatic collection notices and actions of liens and levies until it has completed its backlog of unprocessed mail and responded to taxpayers' correspondence. If requested by a specific taxpayer, the Collection Division should provide a six-month hold on collection matters while correspondence, amended returns, or other requests are pending. Preventing collection actions on premature assessments is critical to avoid taxpayer burden and harm, as well as to protect the taxpayer's *rights to quality service* and *a fair and just tax system*.

#### Collection Notices Do Not Explain Taxpayers Rights

Taxpayers may request a CDP hearing to challenge enforced collection action, but the IRS does not adequately inform taxpayers that they will not be permitted to challenge their liability in a CDP hearing if they received a notice of deficiency or otherwise had an opportunity to dispute the liability.

#### The Low-Income Indicator Does Not Work as It Should, Causing Taxpayers to Pay Incorrect Installment Agreement User Fees

Congress and the IRS have taken measures to assist low-income taxpayers in managing their tax debt. One important development has been a low-income indicator (LII) that the IRS places on the accounts of taxpayers who, according to its records, meet the definition of low-income. The IRS uses the LII to determine whether taxpayers are eligible for a reduced or waived IA user fee. However, the LII does not accurately identify low-income taxpayers, which causes taxpayers to pay incorrect IA user fees. Taxpayers who are correctly identified as low-income do not receive fee reimbursements that the law requires. The IA user fees are lower for taxpayers who can make automatic payments through their bank accounts, known as direct debit IAs (DDIAs), an option that is not available to an unbanked taxpayer.

## Collection Relief Is Underutilized

CNC-Hardship designations are difficult to obtain, requests for OICs declined in seven of the past eight years, and OBRs involve such short timeframes that many taxpayers are not able to receive them.

## ANALYSIS

The National Taxpayer Advocate has long advocated that taxpayers who owe a tax debt should be responsible for that debt but not at the expense of suffering economic hardship.<sup>1</sup> This mirrors the approach taken by Congress. Congress granted broad levy authority to the IRS under IRC § 6331 but also recognized the need to balance this power with the needs of taxpayers facing economic hardship. For example, Congress exempted certain property from levy, including clothes and schoolbooks, tools of a trade, and unemployment benefits.<sup>2</sup> If a levy is creating an economic hardship, the IRS must release the levy under IRC § 6343(a)(1)(D).<sup>3</sup> “Economic hardship” is present when a levy “will cause an individual taxpayer to be unable to pay his or her reasonable basic living expenses.”<sup>4</sup>

The IRS uses the Federal Poverty Level guidelines to determine whether a taxpayer qualifies for certain protections. For example, some “low-income” taxpayers with adjusted gross incomes (AGIs) of 250 percent or less of the Federal Poverty Level qualify to pay a reduced IA user fee.<sup>5</sup> For the 48 contiguous states, the 2021 Federal Poverty Level for a one-person household is \$12,880, and for a family of four it is \$26,500. In the same year, 250 percent of the poverty level for a one-person household is \$32,200, and for a family of four it is \$66,250.<sup>6</sup>

Being low-income often means a person is less likely to have access to quality broadband internet.<sup>7</sup> He or she is less likely to have access to reliable childcare and stable housing.<sup>8</sup> Low-income taxpayers are less likely to have legal representation during an audit.<sup>9</sup> They are less likely to have a bank account.<sup>10</sup> These and other conditions impact a low-income taxpayer’s ability to navigate the IRS collection process or recover from the shock of an unexpected collection action.

To its credit, the IRS has recognized the need to alleviate the burden on taxpayers struggling to balance paying their tax debt with paying their basic living expenses, particularly in response to the COVID-19 pandemic.<sup>11</sup> The IRS identified low-income taxpayers as a “traditionally underserved” community and plans to “identify best practices and customize [its] approach to meet the specific needs of each underserved segment and provide personalized education and outreach through the service channels and in the languages preferred by these taxpayers.”<sup>12</sup> Meanwhile, some processes intended to help low-income taxpayers do not work as they should. The IRS and Congress can do more to accommodate the needs of low-income taxpayers in collection actions.

## Processing Delays and Correspondence Backlogs Result in Premature Collection Action

The impacts of COVID-19 and reduced staffing on processing amended returns and correspondence have caused long delays in responding to taxpayers. For example, if the IRS asserted a late filing penalty and the taxpayer responded with proof of mailing or a reasonable cause defense, the taxpayer may still be waiting to hear from the IRS many months later. Even though the IRS has not caught up on processing paper returns and correspondence, the IRS’s computer system continues to move forward and either initiates or continues with collection notices and activity. The National Taxpayer Advocate requests the IRS defer all collection activity until 45 days after the IRS addresses the merit of the taxpayer’s request or response to an adjustment, an assessment, or proposed liability. In other words, as the impacts of COVID-19 and reduced staffing continue to delay processing of paper correspondence, the IRS should hold all automatic collection notices and suspend collection actions, such as filing Notices of Federal Tax Liens (NFTLs) and issuing levies, until the IRS has completed its backlog of unprocessed mail and responded to taxpayers’ correspondence. In addition, if requested by a specific taxpayer, the Collection Division should provide longer holds on collection actions

while the correspondence, amended return, or other requests are pending. IRS guidance permits employees to stop sending collection notices to taxpayers for a specified number of weeks.<sup>13</sup> This prevents the IRS from proceeding with collection action. For example, if an employee requests additional information from the taxpayer by telephone, the employee will suppress collection notices to give the taxpayer time to respond. Suppressing collection notices generally lasts for nine weeks at the most.<sup>14</sup> This hold period on collection notices or enforcement is inadequate based upon the extended processing delays experienced by taxpayers. The National Taxpayer Advocate requests the IRS use a six-month hold absent serious compliance risk.

### ***Taxpayers Who Petitioned the Tax Court Experienced Premature Assessments and Collection Action***

As the IRS processed the backlog of mail held during the pandemic, it issued a high volume of notices of deficiency to taxpayers. The notices of deficiency provided taxpayers the ability to contest the tax adjustments to the U.S. Tax Court. When a taxpayer timely files a petition with the U.S. Tax Court, the IRS is prohibited from finalizing the assessment until the Tax Court decision has become final.<sup>15</sup> Corresponding with this high volume of notices was an increase in the number of petitions filed with the U.S. Tax Court.<sup>16</sup> The surge in petitions resulted in processing delays and backlogs for the Tax Court, as it could not timely process the drastic increase and was unable to serve timely notice of the filings to the IRS.

Without notice of the filing of the petition, the IRS's automated systems continued to finalize assessments and pursued collection actions against many taxpayers where assessment and collection should have been suspended pending litigation in the U.S. Tax Court. Consequently, taxpayers have been unnecessarily dealing with collection issues.

Collaborative efforts between the IRS, the IRS Office of Chief Counsel, TAS, the Tax Court, and practitioners resulted in a plan of action to reverse the premature assessments and to prevent continued premature assessments going forward – at least until the Tax Court's backlog is resolved. The Tax Court agreed to electronically provide the IRS with the limited data needed to identify petitioned cases quickly and systemically to prevent and reverse premature assessments. Resolving premature assessments prevents premature collection actions downstream. We encourage the continuation of this process into the future as a proactive measure to prevent future premature assessments, which was an issue before the pandemic. If this procedure were made permanent, premature assessments could be a thing of the past.

### ***Premature Assessments Existed Before the COVID-19 Pandemic***

IRC § 6213 prevents the IRS from making an assessment within 90 days of it mailing a notice of deficiency (150 days if the taxpayer is out of the country). IRC § 6503(a)(1) suspends the assessment statute for the period of time the IRS is prohibited from making an assessment (90 or 150 days) plus 60 days. The 60-day period is an additional period that “is allowed by law to process the assessment plus any time remaining on the assessment statute at the time the notice of deficiency was issued.”<sup>17</sup>

Pursuant to its procedures (other than those that apply to cases in Appeals, discussed below), the IRS suspends the assessment period for 105 days (165 for taxpayers outside the United States) after the mailing of the notice of deficiency. The suspension period is the sum of 90 days (or 150 days if the taxpayer is outside the United States) plus an additional 15 days to determine if the taxpayer has filed a petition.<sup>18</sup> The 105 days may be insufficient, however, if the taxpayer filed a Tax Court petition near the 90- or 150-day deadline and the Court's service on the IRS Office of Chief Counsel is delayed by more than 15 days.

The IRS benefits from a 60-day addition to its assessment statute to complete assessment processing. Extending the suspense period by an additional 15 days beyond the existing 15-day suspense period still affords the IRS a minimum of 30 days, plus any time remaining on the period of limitations for assessment, in which to make its default assessments.<sup>19</sup> While we recognize this additional 15-day extension may prove

challenging for some field cases that must be shipped to an IRS campus for assessment processing, extending the suspense period should present minimal or no difficulty for cases already at the campus – where premature assessments most often occur. Under normal IRS processing procedures, assessments are usually made with at least one year or more on the assessment statute.

TAS reviewed the premature assessments that occurred during the first four months of fiscal year (FY) 2021, comparing this data to the same time period in FY 2020.<sup>20</sup> The data showed that 95 percent of the premature assessments identified in FY 2020 occurred in the campus, and 82 percent of the premature assessments in FY 2021 were also the result of campus assessments. Our analysis revealed that it took an average of 25.5 days from the date of petition for cases to appear on a docket list in FY 2020. This average doubled to 53 days in FY 2021 during the same period. Increasing the suspense period from 15 to 30 days in its internal procedures would have prevented 90 percent of the premature assessments identified in FY 2020.

To avoid burdening taxpayers with potential premature assessments, the National Taxpayer Advocate recommends the IRS change its internal procedures to wait for 120 days (rather than 105 days) after it issues a notice of deficiency before assessing additional tax. Our recommendation is consistent with Appeals' 30-day suspension period for cases in which Appeals issues the notice of deficiency.<sup>21</sup> Preventing premature assessments is critical and is needed to avoid taxpayer burden and harm, as well as to protect the taxpayer's *rights to quality service and a fair and just tax system*.

### **IRS Notices Do Not Adequately Inform Taxpayers They Will Not Be Able to Dispute the Underlying Liability in a Collection Due Process Proceeding**

Under IRC §§ 6320 and 6330, taxpayers may request an independent review of an NFTL filed by the IRS or of a proposed levy action.<sup>22</sup> The purpose of these CDP rights is to give taxpayers adequate notice of IRS collection activity and a meaningful hearing after the IRS files an NFTL and before the IRS deprives them of property by levy action. In a CDP hearing, a taxpayer may raise a variety of issues, such as collection alternatives or spousal defenses, but may only dispute the underlying liability if the taxpayer did not actually receive a notice of deficiency or *did not otherwise have an opportunity to dispute such liability*.<sup>23</sup> The opportunity to dispute a tax liability includes the opportunity to challenge the liability in an administrative hearing before the IRS Independent Office of Appeals or in a judicial proceeding.<sup>24</sup>

At the conclusion of a CDP hearing, the taxpayer, within 30 days of the Settlement Officer's determination, may petition the Tax Court for review of the determination.<sup>25</sup> If the taxpayer's underlying liability was not at issue in the CDP hearing, the taxpayer cannot dispute the underlying liability in the Tax Court proceedings.<sup>26</sup>

For example, the IRS systemically assesses certain types of penalties, for which it is not required to issue a notice of deficiency, and initiates the collection process. As of 2018, the IRS was sending a version of Notice CP 15, Notice of Penalty Charge, informing the taxpayer of a penalty assessment under IRC § 6038 but making only a passing reference to the right to seek a conference with IRS Appeals. Page two of Notice CP 15, toward the end of the page, advises: "If you wish to appeal this penalty, send the IRS at the address shown on page 1 of this notice a written request to appeal within 30 days from the date of this notice. Your request should include any explanation and documents that will support your position. Your explanation should reflect all facts that you contend are reasonable cause for not asserting this penalty."

The IRS's position is that correspondence that advises taxpayers of their right to seek a conference with IRS Appeals constitutes an "opportunity to dispute such liability," even when the taxpayer does not respond to the notice or have an Appeals conference, and courts have agreed with the IRS.<sup>27</sup> Taxpayers who later request a CDP hearing are surprised to learn they cannot dispute the merits of the assessment and that an Appeals conference, briefly noted on page two of Notice CP 15, was their only opportunity to dispute the underlying liability in a prepayment forum before the IRS can proceed with enforced collection. The notice fails to



provide taxpayers with an explanation of the consequences of not filing a protest upon receipt of Notice CP 15. The few sentences in the IRS collection notice on page two do not provide sufficient information for taxpayers to understand their rights and the serious consequences of not filing a protest with the early collection notice.

The National Taxpayer Advocate recommends that the IRS revise Notice CP 15 and any other notices that in its view constitute “an opportunity to dispute such liability” to include complete information about taxpayers’ rights to seek an administrative appeal, that the notice constitutes “an opportunity to dispute” the liability, and that the taxpayer cannot dispute the merits of the underlying liability at a future CDP hearing or with the U.S. Tax Court.<sup>28</sup>

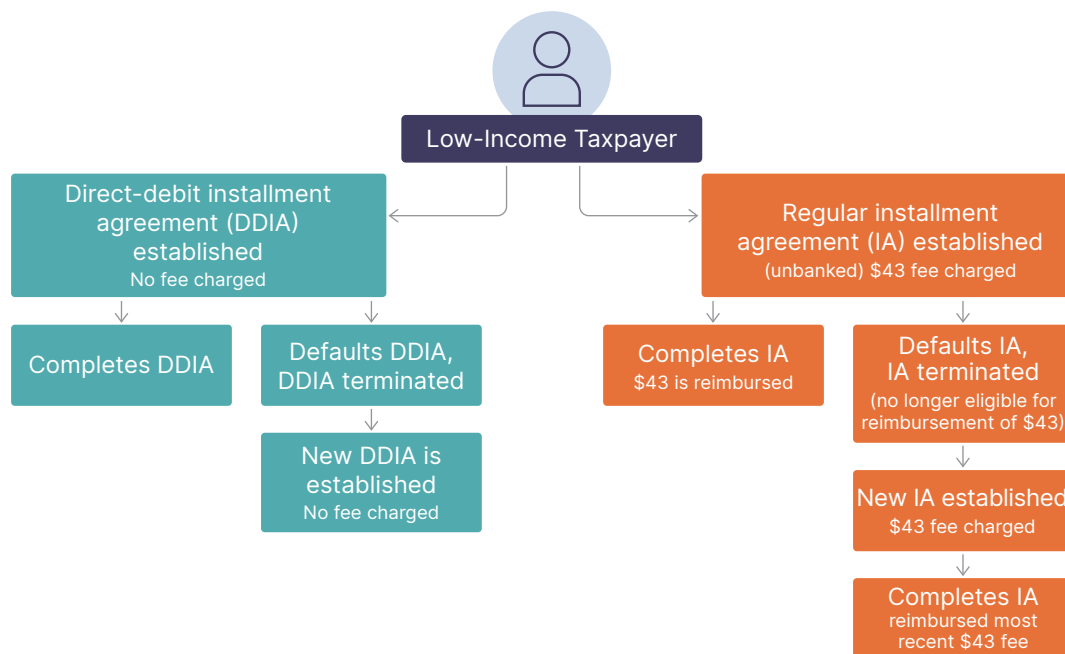
### **The IRS Does Not Accurately Identify Low-Income Taxpayers on Its Systems, Resulting in Incorrect Installment Agreement User Fees and Failures to Reimburse User Fees as the Law Requires**

IAs are an important tool because they allow taxpayers to pay their tax debts in increments.<sup>29</sup> During this period, the IRS will not generally levy a taxpayer’s property or rights to property (e.g., bank accounts or wages) to collect back taxes while taxpayers continue to make monthly payments.<sup>30</sup> The IRS may file NFTLs and offset refunds, however.<sup>31</sup>

**As the impacts of COVID-19 and reduced staffing continue to delay processing of paper correspondence, the IRS should hold all automatic collection notices and suspend collection actions, such as filing Notices of Federal Tax Liens and issuing levies, until the IRS has completed its backlog of unprocessed mail and responded to taxpayers’ correspondence.**

Taxpayers are often surprised to learn there is a user fee for a long-term IA, meaning an IA with a duration of more than six months.<sup>32</sup> The fee varies and may be reimbursable depending on whether the agreement is a DDIA, whether the IA is being reinstated after a default, and whether the taxpayer is low-income.<sup>33</sup> Low-income taxpayers for this purpose are those whose incomes do not exceed 250 percent of the Federal Poverty Level.<sup>34</sup> The IRS uses the LII to designate the accounts of taxpayers it has identified as low-income. The IA user fee is waived for low-income taxpayers with a DDIA and is \$43 for low-income taxpayers with a non-DDIA.<sup>35</sup> Figure 2.10.1 shows the IA user fees that apply to low-income taxpayers who, after speaking with an IRS employee, enter into long-term IAs.



**FIGURE 2.10.1****Installment Agreement User Fees Applicable to Low-Income Taxpayers**

In comparison, for taxpayers who are not low-income, the IA user fee is \$107 for a DDIA and \$225 for a non-DDIA.<sup>36</sup> Thus, being recognized as low-income may make the difference between being able to enter into an IA or not.

The IRS process of identifying low-income taxpayers and placing the LII indicator on their accounts is not working as it should. TAS estimates that there are nearly nine million taxpayers who should have the LII on their account but do not, and more than one million taxpayers who have the LII on their account but should not.<sup>37</sup> To the extent these taxpayers entered into an IA, some paid a higher user fee than required or were treated as ineligible for reimbursement of IA user fees as the law requires, while others paid a lower user fee than required and were treated as eligible for reimbursement of a fee when they were not.

Even where the LII is on the account, the process does not always work as it should. For example, in FYs 2019 and 2020, nearly 74,000 taxpayers with an LII on their accounts entered into a non-DDIA. IRS records showed they were unbanked, the taxpayers paid their user fees, and they successfully completed their IAs.<sup>38</sup> Under the law, and according to IRS procedures, the IRS should reimburse their user fees.<sup>39</sup> None of these taxpayers received reimbursement of their user fees.<sup>40</sup>

Low-income taxpayers without the LII on their account can complete Form 13844, Application for Reduced User Fee for Installment Agreement. However, if the most recent tax return does not reflect a level of income that would qualify the taxpayer for the LII, the IRS will deny the request even though the taxpayer's situation may have changed since the taxpayer last filed a return.<sup>41</sup> In the context of OICs, the IRS has adopted procedures that allow it to consider changes in taxpayers' circumstances when considering whether the taxpayer qualifies for a fee waiver.<sup>42</sup> The National Taxpayer Advocate recommends that the IRS adopt the same procedures in the context of IA user fees.

Additionally, to lessen the disparity in the user fees between taxpayers with a bank account and those without, and to encourage more taxpayers to shift to an online resolution of their liabilities, the National Taxpayer

Advocate recommends that Congress amend IRC § 6159 to require the IRS to waive user fees for taxpayers who enter into DDIA's or who have income equal to or less than 250 percent of the Federal Poverty Level.

### **The IRS Should Spread the Installment Agreement User Fees Over the Life of the Installment Agreement**

Taxpayers have multiple options to pay an installment agreement. They can choose to make automatic payments through their bank accounts, known as DDIA's; they can authorize their employer to send monthly payments; they can pay monthly through the IRS website; they may pay with credit cards; or they can agree to send a check or money order monthly (non-DDIA's).<sup>43</sup> The IRS advises taxpayers the first installment must cover the user fee, even if their agreed-upon payment is less than the user fee. This is particularly difficult for taxpayers whose income only marginally covers their expenses and whose IAs might therefore collapse.

Whether or not Congress amends IRC § 6159 to simply waive IA user fees for all DDIA's, the National Taxpayer Advocate recommends the IRS spread the user fee over the life of the IA and include it in the agreed-upon payment amount for all taxpayers regardless of their choice of payment.

### **Currently Not Collectible Status Is Unnecessarily Difficult to Obtain, and Offers in Compromise and Offset Bypass Refunds Are Underutilized**

#### ***Taxpayers Must Call the IRS to Receive Currently Not Collectible Status***

CNC status due to hardship may be a good option for a low-income taxpayer who either needs some breathing room to recover from a one-time financial shock or who does not foresee a positive change in financial circumstances. Under its procedures, the IRS may designate a taxpayer's account as CNC status due to hardship when the IRS determines that a taxpayer cannot pay reasonable basic living expenses.<sup>44</sup> However, a taxpayer cannot request CNC consideration without first working with an IRS employee, and if the taxpayer is not already working with an IRS employee (for example, as part of a CDP case), it may be difficult to get the needed guidance or assistance.<sup>45</sup> With its low level of telephone service, the IRS must provide taxpayers with other options to seek collection alternatives.

Practitioners report that in their view, taxpayers "must be practically destitute to be granted a CNC."<sup>46</sup> CNC status causes the IRS to pause collection action, including levies, but does not stop the offset of future refunds or the filing of an NFTL.<sup>47</sup> Generally, the IRS requires financial information prior to putting a taxpayer's account in CNC-Hardship status, but there are exceptions.<sup>48</sup> The IRS systemically follows up on CNC-Hardship cases to determine whether there has been an increase in the taxpayer's income sufficient to remove the CNC designation.<sup>49</sup>

The IRS should create and adopt procedures for processing a form, like the form used to request an IA, that taxpayers could use to request CNC-Hardship status. This form would allow taxpayers with internet access to submit an online request for CNC-Hardship consideration based on their last filed return or on updated financial information, thus simplifying the request process for taxpayers and reducing the burden on IRS employees.<sup>50</sup>

#### ***Requests for Offers in Compromise Declined in Seven of the Past Eight Years***

An OIC allows taxpayers to settle their tax debt for less than the full amount owed.<sup>51</sup> An OIC based on doubt as to collectibility may be available after the IRS conducts a financial analysis and determines that the taxpayer's offer reflects his or her "reasonable collection potential."<sup>52</sup> A significant portion of taxpayers who request OICs are low-income. As of the end of 2020, almost 45 percent of taxpayers submitting an OIC in FY 2019 had an LII associated with their accounts, and 40 percent had that indicator on their accounts in FY 2020.<sup>53</sup> OICs positively affect a taxpayer's future compliance. A 2017 study by TAS Research found that individual taxpayers with accepted OICs were more likely (58 percent compared to 42 percent) to timely

file their subsequent income tax returns for the next five years when compared to taxpayers whose OICs the IRS did not accept.<sup>54</sup> For the first five years after the OIC, individual taxpayers with accepted OICs were also much more likely to pay their subsequent income taxes than taxpayers whose OICs the IRS did not accept (72 percent compared to 52 percent).<sup>55</sup> FY 2020 marked the seventh consecutive year of decline in OIC submissions, yet the IRS does not identify and measure factors that may drive OIC receipts.<sup>56</sup> The IRS recently unveiled a new how-to video series to educate taxpayers about OICs and help them avoid potential scams.<sup>57</sup> The National Taxpayer Advocate applauds this initiative.

To support its efforts to better serve underserved communities, TAS recommends that the IRS analyze the information on submitted OICs so it can develop more nuanced outreach to encourage low-income taxpayers to consider an OIC if appropriate. For instance, perhaps a taxpayer experiencing sustained unemployment is more likely to file a successful OIC.

The National Taxpayer Advocate also appreciates the recent changes the IRS made to the OIC program.<sup>58</sup> Effective November 1, 2021, the IRS will no longer offset, or recoup, refunds for the calendar year in which the IRS accepted the OIC, *i.e.*, the IRS will no longer apply that refund to the outstanding tax liability for the year(s) included in the OIC agreement. For example, assume the IRS accepts a taxpayer's OIC to settle liabilities for tax years (TYs) 2017 and 2018 on December 15, 2021. Under the new guidance, the IRS will no longer offset the refund on the taxpayer's TY 2021 return and apply it as a payment to the TYs 2017 and 2018 liabilities subject to the OIC agreement. For many taxpayers, this one change could be the difference of even considering applying for an OIC.

Another IRS development that TAS believes will increase OICs is a temporary change the IRS adopted on September 30, 2021, which allows processing of OICs when the IRS has not yet processed a required return, if the taxpayer sends a copy of the return.<sup>59</sup> TAS recommends that the IRS continue this practice while the COVID-19 processing challenges linger and until the IRS returns to a normal level of inventory backlog.

### ***The Offset Bypass Refund Is a Powerful Tool for Low-Income Taxpayers But Is Underutilized***

The IRS has the authority to offset a taxpayer's refund and apply it to a federal tax liability, but it is not required to do so.<sup>60</sup> The IRS can bypass the offset and issue a refund to taxpayers who are experiencing a financial hardship, a refund known as an Offset Bypass Refund (OBR).<sup>61</sup>

The OBR is especially important for low-income taxpayers who count on refundable credits to help them get through the year. TAS data shows that nearly 65 percent of the OBRs the IRS issued in FY 2021 included the Earned Income Tax Credit (EITC) or Additional Child Tax Credit (ACTC), for about \$1.4 million in relief. As shown in Figure 2.10.2, data going back to 2017 shows the value of OBRs in remediating a hardship.<sup>62</sup>

**FIGURE 2.10.2, Offset Bypass Refunds, FYs 2017–2021**

FY	Number of OBRs	Amount of OBRs	Number With EITC or ACTC	Amount of ACTC	Amount of EITC
2017	1,050	\$2,788,685	654	\$516,341	\$1,779,474
2018	1,037	\$2,999,220	664	\$579,144	\$1,817,649
2019	745	\$2,298,465	492	\$585,319	\$1,438,669
2020	710	\$2,358,518	518	\$730,305	\$1,641,672
2021	511	\$1,854,337	331	\$476,312	\$904,196

Generally, an OBR is only available before the IRS applies the current refund to a prior tax liability and where the taxpayer establishes economic hardship (for example, the individual needs to pay a utility bill to avoid disconnection). Once the taxpayer establishes the amount of the hardship, the IRS will only bypass enough of the offset to alleviate the hardship amount. For example, if a taxpayer has a refund of \$4,000 and outstanding tax liabilities of more than the \$4,000, but establishes a hardship of \$1,000, the IRS will issue a \$1,000 refund to the taxpayer and offset the balance, \$3,000, to the tax liability.

With the short timeframe involved in OBRs – filing a return, contacting the IRS, and establishing the extent of the hardship before the IRS applies the refund to a prior tax liability – many taxpayers are not able to receive an OBR prior to their refund being offset by filing their return. The National Taxpayer Advocate recommends that the IRS establish and publicize a designated unit to receive and process OBRs. Upon a request by a taxpayer, the IRS could utilize a freeze code holding up any payment of a refund or offset to a prior tax liability that would provide the taxpayer and the IRS time to document the hardship before any offset takes place.

The OBR procedure is not a well-known option, and there is a very limited time in which taxpayers can request the OBR and establish their hardship amount. In Publication 594, The IRS Collection Process, the IRS explains the IRS's authority to offset a refund to a tax liability but not the taxpayer's ability to request an OBR.<sup>63</sup> The IRS has no form taxpayers can use to request an OBR, and a search of the IRS's website does not reveal any direct references to either "OBR" or "offset bypass." While the Internal Revenue Manual (IRM) guides its employees on processing OBRs, most taxpayers are unlikely to stumble across the benefits or requirements of the OBR program, and if they call the IRS, as noted above, the IRS may not answer their call. Assistance may be available from TAS, however.

The National Taxpayer Advocate recommends the IRS make OBRs systemically available to taxpayers whose refunds include allowable EITC claims, to the extent the allowable EITC exceeds the current year's tax liability.<sup>64</sup> Programming its system to issue refunds for this amount systemically will reduce the need to request and manually process OBRs and provide these taxpayers the benefits Congress intended by providing financial support for taxpayers needing financial assistance to support their families.

The IRS can better get the message out by leveraging relationships it has with the public through Stakeholder Partnerships, Education, and Communication (SPEC).<sup>65</sup> Volunteers who prepare tax returns through Volunteer Income Tax Assistance and Tax Counseling for the Elderly sites could share information on OBRs at the time of return preparation or submission.

In addition, to better accomplish Congress's intent of giving taxpayers the financial support EITC provides, the National Taxpayer Advocate recommends that Congress amend IRC § 6402(a) to prohibit offset of the portion of the refund associated with EITC to prior year tax liabilities.

## CONCLUSION AND RECOMMENDATIONS

Congress and the IRS acknowledge that low-income taxpayers struggle to balance paying their tax liabilities with paying their basic living expenses. Particularly as part of its response to the COVID-19 pandemic, the IRS provided relief from collection action that burdens low-income taxpayers. The National Taxpayer Advocate applauds those efforts and more recent steps the IRS has taken to make OICs more attractive. But Congress and the IRS can do more.

## Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Defer collection activity until 45 days after the IRS addresses the merits of a taxpayer's request or response to an adjustment, an assessment, or proposed liability.
2. If requested, provide a six-month hold on collection matters while the taxpayer's correspondence, amended return, or other request is pending.
3. Wait for 120 days (rather than 105 days) after issuing a notice of deficiency before assessing additional tax (*i.e.*, amend the IRM to extend the suspension period from 15 days to 30 days).
4. Revise Notice CP 15 and any other correspondence to taxpayers that in the IRS's view constitutes "an opportunity to dispute such liability" for purposes of IRC § 6330(c)(2)(B) to include detailed information about taxpayers' rights and consequences of an administrative appeal, to explain that the notice constitutes their only "opportunity to dispute" the liability, and to explain that the taxpayer will not be permitted to dispute the merits of the liability at a future CDP hearing or before the U.S. Tax Court.
5. Change IAs to incorporate user fees into the agreed-upon payments over the life of the agreement rather than requiring taxpayers to pay the user fee in the first month.
6. Allow taxpayers to request CNC-Hardship consideration either online or by submitting a standardized form.
7. Analyze information from submitted OICs and develop a more nuanced outreach to encourage low-income taxpayers to consider OICs when appropriate.
8. Continue the practice of processing OICs when the IRS has not yet processed a required return when the taxpayer sends a copy of the return while the COVID-19 processing challenges linger and until the IRS returns to a normal level of inventory backlog.
9. Allow IRS employees to freeze refunds while a taxpayer's request for an OBR is under consideration.
10. Make OBRs systemically available to taxpayers to the extent their allowable EITC claims exceed the current year's tax liability where the taxpayer has only federal tax liabilities.

## Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 6159 to require the IRS to waive user fees for taxpayers who enter into DDIA's or who have an AGI equal to or less than 250 percent of the Federal Poverty Level.
2. Amend IRC § 6402(a) to prohibit offset of the EITC portion of a tax refund.
3. Amend IRC § 6330 to provide that "an opportunity to dispute" an underlying liability means an opportunity to dispute such liability in a prepayment judicial forum.
4. Amend IRC § 6212 to provide that the assessment of foreign information reporting penalties under IRC §§ 6038, 6038A, 6038B, 6038C, and 6038D is subject to deficiency procedures.

## RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division, and Chief Taxpayer Experience Officer  
Darren Guillot, Commissioner, Collection and Operations Support, Small Business/Self-Employed Division

## IRS COMMENTS

The IRS is aware of the many challenges that low-income taxpayers face and is committed to providing appropriate relief and assistance to aid these taxpayers in balancing the ability to pay their living expenses and their tax liabilities. The unprecedented challenges of the COVID-19 pandemic have had lasting effects on the IRS collection process that we are continuing to mitigate through adjusted policies and procedures. We have taken extraordinary steps to protect the rights of, and reduce the burden on, all taxpayers. We will continue to adapt to meet the needs of taxpayers while effectively and fairly administering the tax laws.

We appreciate the National Taxpayer Advocate's (NTA's) recognition of the initiatives, including the Offer in Compromise policy to not offset refunds after the offer acceptance date, that we have implemented to improve the experience of underserved taxpayers and our continued actions to educate the taxpayers of available collection alternatives. The IRS offers a wide range of alternatives for taxpayers who may be facing difficult financial circumstances, including short and long-term payment plans, temporary suspensions of collection activity, and offers in compromise. Training and procedural guidelines in the Internal Revenue Manual (IRM) provide employees information on how to determine a taxpayer's ability to pay, enabling appropriate decision making to resolve cases. The IRS continues to be committed to identifying best practices and customizing our approach to meet the specific needs of each underserved segment of the population and provide personalized education and outreach through the service channels and in the languages preferred by these taxpayers.

The long-term effect of the pandemic has created unavoidable delays responding to some taxpayer correspondence being addressed within the campus operations. We understand the concern for potential premature collection actions due to these delays. Our collection processes require certain letters and notices to be promptly sent to taxpayers within statutory timeframes. Delaying all collection notices as the NTA suggests would have the effect of delaying notification to taxpayers who do not have claims or correspondence pending, potentially delaying their efforts to resolve their liabilities. However, we genuinely regret any taxpayers are having these experiences and we are balancing the need to issue collection notices and other compliance correspondence with the possibility that we have not yet processed a payment or account adjustment. Our collection processes generally provide taxpayers multiple opportunities, including the collection due process, to raise issues or concerns to the collection or appeals functions prior to enforcement. Taxpayers who believe that a notice they receive is incorrect should follow the notice's guidance on how to request help from the IRS and we will work with the taxpayer to address their concerns prior to enforcement.

We have worked in recent years to improve our collection notices, to make them easier to understand. In addition to revised text, a number of notices now include "quick response" (QR) codes which can be scanned with a cell phone to direct the taxpayer to information and resources on IRS.gov having to do with payment options, taxpayer rights and other topics.

The IRS recognizes and understands the potential issues that can arise due to premature assessments that could occur because of the backlog in the Tax Court, which has been compounded by the pandemic. In response, the Tax Court, in collaboration with the IRS and the NTA, has created an interim solution to electronically provide the IRS with the data necessary to identify petitioned cases quickly and systemically to prevent and reverse premature assessments. In addition, the IRS has created an email box to address premature assessments on an individual basis. The IRS has published articles addressing the availability of this mailbox and its requirements.



We share the NTA's commitment to providing low-income taxpayers with access to suitable collection alternatives. We are willing to work with the Taxpayer Advocate Service (TAS) office on proposals to make user fees less burdensome for low-income taxpayers, where doing so would be feasible. We have worked to improve the awareness of underserved taxpayer populations with regard to the options available to help them to meet their tax obligations. We have implemented programming to correct the systemic Low-Income Indicator (LII) determination on taxpayer accounts, and we are currently working to identify the scope and financial impact to taxpayers who did not have the LII on their accounts to initiate required corrective actions.

The IRS recognizes the positive impact Offset Bypass Refunds (OBRs) can have for taxpayers suffering immediate and specific financial hardships. In December 2021, the Director of Collection published an article, *How IRS Collection is Helping Taxpayers During the Pandemic*,<sup>66</sup> highlighting the availability and process for requesting an OBR to increase awareness for affected taxpayers.

We are continually striving to improve our collection practices to protect taxpayer rights and effectively administer the tax laws. As new opportunities arise to improve services to taxpayers, we will educate the taxpayers of the different options available to assist them in paying their tax liabilities.

## TAXPAYER ADVOCATE SERVICE COMMENTS

The National Taxpayer Advocate agrees that the IRS offers a wide range of alternatives for taxpayers who may be facing difficult financial circumstances, including short- and long-term payment plans, temporary suspensions of collection activity, and OICs. However, these alternatives are not as widely used as they could be, due to, among other things, the flawed LII indicator, the requirement of upfront payment of IA fees, and the need to speak with an IRS employee to obtain CNC-Hardship status. The reasons for the declining numbers of submitted OICs in seven of the last eight years are unknown, and we encourage the IRS to investigate why this is happening.

Because the IRS is declining to suppress collection notices as the National Taxpayer Advocate is recommending, it is unclear how the IRS is "balancing the need to issue collection notices and other compliance correspondence with the possibility that we have not yet processed a payment or account adjustment." In the meantime, the IRS's advice that "taxpayers who believe that a notice they receive is incorrect should follow the notice's guidance on how to request help from the IRS and we will work with the taxpayer to address their concerns prior to enforcement" may be generally sound but feels almost taunting when calls to the IRS reached an all-time high and the Level of Service on IRS phone lines fell to an all-time low.<sup>67</sup> Possibly the IRS could establish another option of communication for taxpayers requesting a stay on collection to prevent these situations. The National Taxpayer Advocate welcomes future discussions to eliminate undue burdens on taxpayers.

The National Taxpayer Advocate appreciates the IRS's willingness to work with TAS on proposals to make user fees less burdensome for low-income taxpayers, where doing so would be feasible. We look forward to the IRS's responses to our specific recommendations, including those relating to user fees and collection notices.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that IRS:

1. Defer collection activity until 45 days after the IRS addresses the merits of a taxpayer's request or response to an adjustment, an assessment, or proposed liability.
2. If requested, provide a six-month hold on collection matters while the taxpayer's correspondence, amended return, or other request is pending.
3. Wait for 120 days (rather than 105 days) after issuing a notice of deficiency before assessing additional tax (*i.e.*, amend the IRM to extend the suspension period from 15 days to 30 days).
4. Revise Notice CP 15 and any other correspondence to taxpayers that in the IRS's view constitutes "an opportunity to dispute such liability" for purposes of IRC § 6330(c)(2)(B) to include detailed information about taxpayers' rights and consequences of an administrative appeal, to explain that the notice constitutes their only "opportunity to dispute" the liability, and to explain that the taxpayer will not be permitted to dispute the merits of the liability at a future CDP hearing or before the U.S. Tax Court.
5. Adopt procedures that allow the IRS to consider changes in taxpayers' circumstances when determining the applicable IA user fee, similar to procedures in place for considering whether a taxpayer qualifies for an OIC fee waiver.
6. Change IAs to incorporate user fees into the agreed-upon payments over the life of the agreement rather than requiring taxpayers to pay the user fee in the first month.
7. Allow taxpayers to request CNC-Hardship consideration either online or by submitting a standardized form.
8. Analyze information from submitted OICs and develop a more nuanced outreach to encourage low-income taxpayers to consider OICs when appropriate.
9. Continue the practice of processing OICs when the IRS has not yet processed a required return when the taxpayer sends a copy of the return while the COVID-19 processing challenges linger and until the IRS returns to a normal level of inventory backlog.
10. Allow IRS employees to freeze refunds while a taxpayer's request for an OBR is under consideration.
11. Make OBRs systemically available to taxpayers to the extent their allowable EITC claims exceed the current year's tax liability where the taxpayer has only federal tax liabilities.

### Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 6159 to require the IRS to waive user fees for taxpayers who enter into DDIA's or who have an AGI equal to or less than 250 percent of the Federal Poverty Level.
2. Amend IRC § 6402(a) to prohibit offset of the EITC portion of a tax refund.
3. Amend IRC § 6330 to provide that "an opportunity to dispute" an underlying liability means an opportunity to dispute such liability in a prepayment judicial forum.
4. Amend IRC § 6212 to provide that the assessment of foreign information reporting penalties under IRC §§ 6038, 6038A, 6038B, 6038C, and 6038D is subject to deficiency procedures.

## Endnotes

- 1 For an example of TAS advocacy related to collection practices and low-income taxpayers, see National Taxpayer Advocate 2018 Annual Report to Congress 228-239 (Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*).
- 2 For a complete list of property exempt from levy, see IRC § 6334(a).
- 3 See also Treas. Reg. §§ 301.6320-1(e)(3) Q&A-E1, 301.6330-1(e)(3) Q&A-E1, which require the IRS to consider whether the continued existence of a filed Notice of Federal Tax Lien (NFTL) or a proposed levy balances the need for efficient collection of the tax with legitimate concerns of the taxpayer that the collection action be no more intrusive than necessary.
- 4 Treas. Reg. § 301.6343-1(b)(4).
- 5 See IRC § 6159(f)(2).
- 6 See U.S. Dept. of Health and Human Services, *Poverty Guidelines* (Jan. 13, 2021), <http://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.
- 7 Only 57 percent of Americans earning less than \$30,000 per year report having broadband internet access at home compared to 93 percent earning \$100,000 or more per year. Emily Vogels, *Digital Divide Persists Even as Americans With Lower Incomes Make Gains in Tech Adoption*, PEW RESEARCH CENTER (June 22, 2021), <https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/>.
- 8 Douglas Rice, et al., *Child Care and Housing: Big Expenses With Too Little Help Available*, CENTER ON BUDGET AND POLICY PRIORITIES (Apr. 26, 2019), <https://www.cbpp.org/research/housing/child-care-and-housing-big-expenses-with-too-little-help-available>.
- 9 See Most Serious Problem: *Correspondence Audits: Low-Income Taxpayers Encounter Communication Barriers That Hinder Audit Resolution, Leading to Increased Burdens and Downstream Consequences for Taxpayers, IRS, TAS, and the Tax Court*, *supra*.
- 10 Federal Deposit Insurance Corporation, *How America Banks: Household Use of Banking and Financial Services 2019 FDIC Survey* 13, Table 3.1 (Oct. 2020), <https://www.fdic.gov/analysis/household-survey/2019report.pdf> (showing that in 2019, 23.3 percent of households with incomes of less than \$15,000 were unbanked, compared to 10.4 percent of households with incomes between \$15,000 and \$30,000; 4.6 percent for households with incomes between \$30,000 and \$50,000; 1.7 percent for households with incomes between \$50,000 and \$75,000; and 0.6 percent for households with incomes of at least \$75,000).
- 11 The People First Initiative put a halt to most collection action between April 1, 2020, and July 15, 2020. By June 2021, the IRS resumed many collection practices, but systemic and automated lien and levy programs remained paused. Taxpayers who failed to respond to previous follow-up letters regarding a tax liability were subject to levies or NFTL filings beginning August 15, 2021. IRS, *IRS Operations During COVID-19: Mission-critical Functions Continue*, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited July 3, 2021).
- 12 IRS, *Taxpayer First Act Report to Congress* 63 (Jan. 2021).
- 13 See Internal Revenue Manual (IRM) 21.5.2.4.8.2, *Suppressing Balance Due Notices* (Oct. 4, 2021).
- 14 See IRM 21.5.2.4.8.2(1)(d), *Suppressing Balance Due Notices* (Oct. 4, 2021).
- 15 IRC § 6213(a).
- 16 See *Most Litigated Issues, Tax Litigation Overview*, *infra*.
- 17 IRM Exhibit 4.8.9-3, *Assessment Statutes: Agreed Case Without Form 872-A Consent, Agreed Case With Form 872-A Consent, Defaulted 90 Day Letter Without Form 872-A Consent, Defaulted 90 Day Letter With Form 872-A Consent* (June 19, 2015).
- 18 IRM 4.8.9.20, *Notice of Deficiency Suspense Files* (July 9, 2013).
- 19 See IRC §§ 6501 and 6503 for the period of limitation on assessment and suspension of the period.
- 20 Memorandum from the National Taxpayer Advocate to Deputy Comm'r, Small Business/Self-Employed (SB/SE) Examination; Deputy Comm'r, SB/SE Collection and Operations Support; Comm'r, Wage and Investment (W&I); and Deputy Comm'r, W&I (July 13, 2021).
- 21 IRM 8.20.6.8, *Introduction to Appeals-Issued Statutory Notice of Deficiency (SND)* (Sept. 10, 2018). This IRM section was "updated to clarify the suspense period includes the number of days during which the taxpayer may file a petition with the United States Tax Court (USTC) plus an additional 30 days to allow for mailing of the petition, assignment of a docket number, and inclusion on the Electronic Docket Listing (EDL). A Note has been added to strengthen the guidance and avoid premature default action."
- 22 IRC §§ 6320(b), 6330(b), enacted as part of the IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3401, 112 Stat. 685, 746.
- 23 IRC §§ 6320(c), 6330(c)(2)(B) (emphasis added).
- 24 Treas. Reg. §§ 301.6320-1(e)(3), Q&A-E2; 301.6330-1(e)(3)Q&A-E2.
- 25 IRC §§ 6230(c), 6330(d).
- 26 Treas. Reg. § 301.6330-1(f)(2), Q&A (F)(3).
- 27 See, e.g., Treas. Reg. 301.6320-1(e)(4), Example 3 (relating to the trust fund recovery penalty (TFRP) under IRC § 6672). The IRS sends Letter 1153, *Proposed Trust Fund Recovery Penalty Notification*, to inform taxpayers it is asserting the TFRP, and courts have held Letter 1153 is an "opportunity to dispute such liability." *Bletsas v. Comm'r*, T.C. Memo. 2018-128, *aff'd* 784 F. App'x 835 (2d Cir. 2019); *Smith v. Comm'r*, T.C. Memo. 2015-60; *Thompson v. Comm'r*, T.C. Memo. 2012-87.
- 28 See National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 35 (Amend IRC § 6330 to Provide That "an Opportunity to Dispute" an Underlying Liability Means an Opportunity to Dispute Such Liability in a Prepayment Judicial Forum); National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 33 (Amend IRC § 6212 to Provide That the Assessment of Foreign Information Reporting Penalties Under IRC §§ 6038, 6038A, 6038B, 6038C, and 6038D Is Subject to Deficiency Procedures).
- 29 IRC § 6159.
- 30 Treas. Reg. § 301.6159-1(f)(1).
- 31 IRM 5.14.1.4.3, *Notice of Federal Tax Lien and Installment Agreements* (Sept. 22, 2021); IRM 5.14.1.2 (11) *Installment Agreements and Taxpayer Rights* (Sept. 22, 2021).
- 32 Meeting Between National Public Liaison Participants and TAS on the topic of Collection Issues Facing Low-Income Taxpayers and Barriers Low-Income Taxpayers Face During the Examination Process (Nov. 9, 2021). The IRS extended the period for long-term IAs from four months to six months. William Hoffman, *IRS May Already Have Spent Much of Its Proposed Budget Increase*, TAX NOTES TODAY (Nov. 19, 2021).
- 33 See IRM 5.19.1.6.4.6, *IA Payment Methods and User Fees (UF) Overview* (Nov. 18, 2021).
- 34 See IRC § 6159(f)(2).

- 35 Under IRC § 6159(f)(2)(A), the IA user fee is waived for low-income taxpayers who enter into a DDIA, and if a low-income taxpayer is unable to enter into a DDIA (perhaps because the taxpayer does not have a bank account), the IRS must reimburse the taxpayer for any fee the taxpayer paid upon completion of the IA. Treas. Reg. § 300.1 caps the IA user fee for low-income taxpayers at \$43.
- 36 See IRM 5.19.1.6.4.6, IA Payment Methods and User Fees (UF) Overview (Nov. 18, 2021) for an overview of fees that apply depending on the type of IA.
- 37 Individual Master File (IMF), Individual Return Transaction File (IRTF) on IRS Compliance Data Warehouse (CDW) through Oct. 28, 2021, based on returns filed in 2019 or 2020, excluding returns filed on the IRS Non-Filer Sign-Up Tool to claim economic impact payments and including the returns of taxpayers whose AGI was reduced to exclude unemployment compensation as provided by Section 9042 of the American Rescue Plan Act of 2021. The total number of incorrect LLI constitutes about six percent of all accounts with an LLI (9,990,985 out of 178,691,827). To its credit, the IRS adjusted the LLI programming after TAS pointed out that there appeared to be a problem with the process. Although the current levels are unacceptably high, TAS estimated that at one time there were about 15 million taxpayers who should have had the LLI on their account but did not, and nearly six million taxpayers who had the LLI on their account but should not. The LLI correctly identifies a significant number of taxpayers who are eligible for reduced or waived IA user fees. As of Nov. 28, 2021, 255,005 taxpayers in inventory with an active IA had a waived fee, and 273,138 had a reduced fee based on low-income qualification. Collection Activity Report 5000-5 Part 2 Stratifications Fee Data (Nov. 28, 2021).
- 38 There were 51,121 of these taxpayers in FY 2019 and 22,759 in FY 2020.
- 39 IRC § 6159(f)(2)(A), IRS Program Requirements Package 460-002, rev'd Mar. 2, 2021.
- 40 IMF on IRS CDW through Oct. 28, 2021. New programming to implement the reimbursement process is scheduled for deployment in Jan. 2022. IRS response to TAS fact check, citing Uniform Work Request 243223 (Dec. 13, 2021).
- 41 In some cases, the IRS approves the request for a reduced user fee but does not inform the taxpayer until after the IRS required the taxpayer to pay the unreduced fee.
- 42 See IRM 5.19.7.2.1.1(3), OIC Application Fee (July 9, 2020) (explaining that a taxpayer whose gross monthly income multiplied by 12 months falls at or below 250 percent of the Federal Poverty Level does not need to pay an OIC user fee). See also IRM 5.8.2.4.1(3), Determining Processability (Sept. 22, 2020) (explaining the taxpayer may qualify for an OIC fee waiver under two different methods: AGI or under monthly income and household size).
- 43 IRS, Letter 2273C, Installment Agreement Accepted: Terms Explained. See IRM 5.19.1.6.4.6, IA Payment Methods and User Fees (UF) Overview (Nov. 18, 2021).
- 44 IRM 5.16.1.2.9, Hardship (Apr. 13, 2021).
- 45 The consolidated Automated Collection System phone lines, used to answer taxpayer calls about collection actions, had a Level of Service (LOS) of 38 percent in FY 2021, but even in FY 2019, the last pre-pandemic year, the LOS was only 34 percent. See Most Serious Problem: Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications, *supra*.
- 46 Meeting Between National Public Liaison Participants and TAS on the topic of Collection Issues Facing Low-Income Taxpayers and Barriers Low-Income Taxpayers Face During the Examination Process (Nov. 9, 2021).
- 47 IRC § 6343(e) requires release of a levy on salary or wages payable to or received by a taxpayer upon agreement with the taxpayer that the tax is CNC. IRS Letter 4223, Case Closed – Currently Not Collectible, for example, advises taxpayers the IRS may offset their refunds or file an NFTL even if they are in CNC status.
- 48 IRM 5.16.1.2.9, Hardship (Apr. 13, 2021). Exceptions include when the aggregate amount is below a certain threshold and the taxpayer has a terminal illness; has excessive medical bills; is incarcerated; has Social Security, welfare, or unemployment as the only source of income; or is unemployed with no source of income. IRM 5.16.1.2.9(6), Hardship (Apr. 13, 2021).
- 49 IRM 5.16.1.6, Mandatory Follow-Up (Apr. 13, 2021).
- 50 As the Internal Revenue Service Advisory Council notes, “the IRS must move away from paper filings and communications – the vulnerabilities of our tax system to paper filings have been highlighted by the pandemic. The cause of future system disruptions may differ, but disruptions will occur.” Internal Revenue Service Advisory Council Public Report 14 (Nov. 2021).
- 51 IRC § 7122.
- 52 See IRM 5.8.1.1.2, Authority (Apr. 20, 2021), describing the grounds for compromising a liability: doubt as to collectibility; doubt as to liability; or promotion of effective tax administration. Reasonable collection potential is the amount that can reasonably be collected from the taxpayer after considering the amount of the taxpayer’s assets, income, and expenses. IRM Exhibit 5.8.1-1, Common Abbreviations Used in IRM 5.8.1 (Apr. 20, 2021).
- 53 IRS, CDW, IMF Entity Table as of cycle 53, 2020.
- 54 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, at 61 (*A Study of the IRS Offer in Compromise Program*).
- 55 *Id.* at 43. For a research study related to business taxpayers using the OIC program showing even better results, see National Taxpayer Advocate 2018 Annual Report to Congress vol. 2, at 132-156 (*A Study of the IRS Offer in Compromise Program for Business Taxpayers*). Taxpayers who request OICs agree to “comply with all provisions of the internal revenue laws, including requirements to timely file tax returns and timely pay taxes for the five year period beginning with the date of acceptance of this offer and ending through the fifth year, including any extensions to file and pay.” IRS, Form 656, Offer in Compromise 6 (Apr. 2021).
- 56 IRS, CAR 5000-108, Monthly Report of Offer in Compromise Activity (Sept. 29, 2008; Oct. 6, 2009; Oct. 4, 2010; Oct. 3, 2011; Oct. 3, 2012; Sept. 30, 2013; Sept. 29, 2014; Oct. 5, 2015; Oct. 3, 2016; Oct. 2, 2017; Oct. 1, 2018; Sept. 30, 2019; and Sept. 28, 2020). See also National Taxpayer Advocate Fiscal Year 2022 Objectives Report to Congress 41 (Systemic Advocacy Objective: *Increase Taxpayer Participation in the Offer in Compromise Program*). There was an increase in OIC submissions of about ten percent in FY 2021 compared to FY 2020, but the number of submissions in FY 2021 was still lower than the number of submissions in FY 2019. IRS, CAR 5000-108, Monthly Report of Offer in Compromise Activity (Oct. 4, 2021).
- 57 IRS, IR-2021-229, IRS Offers How-To Videos to Help Taxpayers Apply for Offers in Compromise and Avoid Scams, <https://www.irsvideos.gov/OIC> (Nov. 17, 2021).
- 58 IRS, SBSE-05-1021-0063 (Oct. 28, 2021); Erin M. Collins, IRS Initiates New Favorable Offer in Compromise Policies, NATIONAL TAXPAYER ADVOCATE BLOG (Nov. 15, 2021).
- 59 IRS, SBSE-05-0621-0029 (June 1, 2021) and SBSE-05-0921-0052 (Sept. 30, 2021).
- 60 IRC § 6402(a). However, the IRS must offset refunds when the taxpayer has any other federal debt or state tax liability. IRC § 6402(c)-(f). The IRS has no discretion to determine whether an offset to a past-due child support or other federal agency non-tax debt under the Treasury Offset Program should occur. IRM 21.4.6.5.11.1, Offset Bypass Refund (Nov. 8, 2017).

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- 61 IRM 21.4.6.5.11.1, Offset Bypass Refund (Nov. 8, 2017). As noted above, the IRS's new policy to not offset refunds to pay tax liabilities following the IRS's acceptance of an OIC and to consider OBRs during the pendency of an OIC is encouraging. IRS, SBSE-05-1021-0063 (Oct. 28, 2021), Erin M. Collins, IRS Initiates New Favorable Offer in Compromise Policies, NATIONAL TAXPAYER ADVOCATE BLOG (Nov. 15, 2021).
- 62 IRS, IMF, IRTF, excluding OBRs in excess of \$25,000.
- 63 IRS, Pub. 594, The IRS Collection Process (July 2018).
- 64 For additional arguments for systemic OBRs, see American Bar Association Tax Section, Letter to Commissioner Charles P. Rettig, Comments Regarding Review of Regulatory and Other Relief to Support Taxpayers During COVID-19 Pandemic (Jan. 15, 2021).
- 65 IRS, Pub. 5090, SPEC Marketing Product for Educational Institutions, Educational Institutions Making a Difference (Aug. 2013).
- 66 IRS, How IRS Collection Is Helping Taxpayers During the Pandemic, <https://www.irs.gov/about-irs/how-irs-collection-is-helping-taxpayers-during-the-pandemic>.
- 67 See Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*, *supra*.